



# City of North Plains

## Agenda

City Council - Regular Session Meeting  
Monday, September 16, 2024 @ 7:00 PM  
Jessie Mays Community Center  
and also via ZOOM

Page

1. LOGIN INFORMATION TO ATTEND VIA ZOOM

**Join Zoom Meeting**

<https://us02web.zoom.us/j/84624241829?pwd=NnBBd09uOUVGSVhXUXQzMjJUMHpaUT09>  
Meeting ID: 846 2424 1829  
Passcode: 831831

**Phone in (no internet)**

253-215-8782  
Meeting ID: 846 2424 1829  
Passcode: 831831

2. CALL TO ORDER

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL

5. CONSENT AGENDA:

(The items on the Consent Agenda are normally considered in a single motion. Any item may be removed for separate consideration upon request by any member of the Council.)

A. **Approval of September 16, 2024, City Council Regular Session Agenda**

B. **Approval of September 3, 2024, City Council Minutes.**

4 - 7

- [09 - City Council - Regular Session - 03 Sep 2024 - Minutes](#)

C. **Approval of the August 26, 2024, Emergency Meeting Minutes**

8 - 11

- [08 - City Council - Special Session - 26 Aug 2024 - Minutes](#)

D. **Proclamation - October is Domestic Violence Awareness Month**

12

- [October - Domestic Violence Awareness Month](#)

6. PUBLIC COMMENT:

We encourage those wishing to comment to do so in advance of the meeting by emailing comments to [info@northplains.org](mailto:info@northplains.org). Comments will be read into the record. Persons wishing to speak on matters not on the agenda may be recognized at this

time.

7. PRESENTATION
  - A. **Commissioner Jerry Willey**
8. STAFF REPORTS
  - A. **Library Department Monthly Report** 13 - 14
    - [Staff Report - Library 9.16.24](#)
  - B. **Police Department Monthly Report** 15 - 16
    - [Staff Report - NP Police Dept 8-2024](#)
  - C. **Public Works Monthly Report** 17
    - [Staff Report - Public Works 9.16.24](#)
  - D. **Community Development Monthly Report** 18 - 20
    - [Staff Report - Planning Manager -9.16.24](#)
    - [Building Permits & Land Use Applications - 9.16.24](#)
  - E. **Finance Department Monthly Report** 21 - 26
    - [Staff Report - Finance Department 9.16.24](#)
9. UNFINISHED BUSINESS:
10. NEW BUSINESS:
  - A. **FEMA - PICM Presentation** 27 - 127
    - [FEMA NFIP-ESA PICM - Staff Report](#)
    - [PICM OR Habitat assessment guide](#)
    - [PICM Oregon NFIP-ESA Model Ordinance](#)
    - [FEMA - PICM Community Letter 20123716 NorthPlains](#)
11. ORDINANCES:
  - A. **Ordinance No. 495 - Amending Code to update Rights-of-way Use Requirements** 128 - 159
    - [Ord. No. 495 - Update Rights of Way Use Requirements - Staff Report](#)
    - [Ord. No 495 - Amending Code to Update Rights-of-Way Use Requirements with Exhibit A](#)
12. REPORTS
  - A. **City Manager Report** 160 - 164
    - UGB Re-look Update
    - [Revised Political Activity Memo 2024](#)
  - B. **Council Reports**
  - C. **Review October 2024 Council Calendar** 165 - 167
    - [2024 October Calendar of All Monthly Meetings](#)
    - [2024 Calendar of all NP City Meetings & Ex Officio duties v6](#)
    - [2024 City Council Business Calendar](#)
13. ADJOURNMENT:

\*\*\*\*\*

North Plains City Council meetings are accessible for disabled individuals. The City will also endeavor to provide services for persons with impaired hearing or vision and other services, if requested, at least 48 hours prior to the meeting. To obtain services, please call City Hall at [\(503\) 647-5555](tel:5036475555)

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**The following City Council Meetings are scheduled to be held at:  
Jessie Mays Community Center - 30975 NW Hillcrest Street North Plains, OR**

**The meetings will be held on the following dates at 7:00 p.m.:**  
Monday, October 7, 2024    Monday, October 21, 2024    Monday, November 4, 2024



## MINUTES

City Council - Regular Session Meeting  
Tuesday, September 3, 2024 - 7:00 PM  
Jessie Mays Community Center  
and also via Zoom

**COUNCIL  
MEMBERS:**

Mayor Teri Lenahan; Council President Russ Sheldon; Councilors:  
James Fage, Robert "Butch" Kindel, Jr., Cameron Martinez, Trista  
Papen, Rickey Smith,

**STAFF PRESENT:**

Interim City Manager Rob Drake, Finance Director Bill Reid, City  
Recorder Lori Lesmeister, City Attorney Chris Crean, Asst. Planner  
Rowan Maiorano (via Zoom)

**OTHER:**

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**2 CALL TO ORDER at 7:02 pm**

**3 PLEDGE OF ALLEGIANCE**

**4 ROLL CALL**

a) Councilors Rickey Smith, Robert "Butch" and Trista Papen excused.

**5 CONSENT AGENDA:**

(The items on the Consent Agenda are normally considered in a single motion. Any item may be removed for separate consideration upon request by any member of the Council.)

- a) Approval of September 3, 2024, City Council Regular Session Agenda
- b) **Approval of August 26, 2024, City Council Minutes.**

\*These minutes will be on the Sept. 16th agenda for approval.

*Motion to approve the Consent Agenda.*

Moved by Councilor Sheldon. Second by Councilor Fage.  
Motion was approved unanimously.

**6 PUBLIC COMMENT:**

- a) Swapnil Badkvr - Giggle Grove Day Care would like to put a day care in North Plains on Glencoe Road and briefly spoke about the financial challenges regarding city application and permit fees. Mr. Badkvr asked the councilors to consider giving him some kind of break on those costs.

Cindy Hirst, Secretary for the North Plains Chamber of Commerce gave an update on several items, including that the board members of the Chamber will be attending tonight's Economic Development Commission meeting to discuss working together on outreach to local businesses, as well as reminding everyone that the grand opening and ribbon cutting for the new Pacific Dog Park will take place Saturday, September 7, 2024 at 1:00 pm. Ms. Hirst thanked Jewett Cameron and Eagle Scout candidate Jack Pitner and his troop members for all of their work getting the city's vision to fruition.

Ms. Hirst said that the Chamber of Commerce would like to do a grand opening/ribbon cutting for the new Public Works building when it is finished. She would also like the city to consider doing public tours at that time so that the residents can see the inside of the new building.

Ms. Hirst said that Oregon Canadian Forest Products has reached out to the Chamber about doing a public party to celebrate the new murals that they have had done on their metal buildings on the north side of Commercial Street. Ms. Hirst said that they would like the city to participate in the event and asked if it would be possible for the city to contribute some funding for the event.

Travis Robicheaux was attending the meeting via Zoom and said that he was under the impression that a discussion about Ziplly Fiber was supposed to be on tonight's agenda. Finance Director Bill Reid said that because the City Council has not addressed and approved a new franchise licensing system, the Ziplly topic was not put on the agenda for this meeting. Mr. Reid said that before any discussion can take place with regards to Ziplly, the new licensing and fee process needs to be adopted. Brief discussion ensued.

## 7 RESOLUTIONS:

### a) Res. No. 2277 - Amending IGA with Washington County for Transit Improvements

Assistant Planner Rowan Mariano gave a brief staff report explaining what the amendments to the Intergovernmental Agreement (IGA) with Washington County consist of with regards to transit improvements.

Brief questions and discussion.

*Move to adopt Resolution No. 2277 Amending the IGA with Washington County for Public Transit Improvements*

Moved by Councilor Sheldon. Second by Councilor Martinez.  
Motion was approved unanimously.

## 8 UNFINISHED BUSINESS:

### a) UGB Amendment "Re-Look" - Proposed Approach

Interim City Manager Rob Drake gave an update on the process of assembling a Re-Look Advisory Committee (RAC) and where the city is with applications for positions on the committee. Because there are still a couple of positions on the committee that have not been filled the city will continue to accept applications at this time, with the hope of having a full committee in place by the end of September. Mr. Drake said that there will be a webpage on the city's website dedicated to materials from all of the meetings, along with any other updates that refer directly to the relook of the UGB. Steve Faust presented the Re-look Proposed Approach.

Discussion and questions ensued.

## 9 NEW BUSINESS:

### a) TDT Bancroft Installment Agreement

Finance Director Bill Reid briefly went through his staff report to explain how the business on the property at 28925 NW West Union Road will be financing their Transportation Development Tax for their 200,000 square foot industrial building over the next 7-years.

Mike Wells, President of Stratus Development was on Zoom and available to answer any questions.

Brief questions and discussion.

## 10 REPORTS

### a) City Manager Report **CC Business Calendar**

Interim City Manager Rob Drake said that Prothman, the company hired by the city for the recruitment of a new city manager, let him know that they have had 23 applications submitted and they have narrowed those down to nine applicants that

they feel meet the city's requirements. Mr. Drake said that there will be an emergency Executive Session meeting next week where Prothman will go over the applications of those nine candidates.

Mr. Drake said that once the council has decided on their three finalists, there will be a meet and greet so that they will have the opportunity to introduce themselves to North Plains residents.

b) **Council Reports**

Councilor Sheldon attended the August Library Board meeting, noting that Emily West thanked the city council for approving her full-time position at their August 26, 2024, meeting.

Commissioner Jerry Willey is scheduled to be at the September 16, 2024, council meeting with a semi-annual update.

Councilor Fage noted that there is an opening for a CPA at the Family Justice Center.

c) **Review September 2024 Council Calendar**

**11 ADJOURNMENT: at 8:11 pm**

Next meeting scheduled for Monday, September 16, 2024, at 7:00 pm.

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Teri Lenahan, Mayor

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Lori Lesmeister, City Recorder

Date Approved \_\_\_\_\_



## MINUTES

City Council - Special Session Meeting  
Monday, August 26, 2024 – 7:00 pm  
Jessie Mays Community Center  
And also via Zoom

**COUNCIL MEMBERS:**

Mayor Teri Lenahan; Council President Russ Sheldon; Councilors: James Fage, Robert "Butch" Kindel, Jr., Cameron Martinez, Trista Papen, Rickey Smith

**COUNCIL ABSENT:** Councilor Rickey Smith excused

**STAFF PRESENT:** Interim City Manager Rob Drake, Finance Director Bill Reid, City Recorder Lori Lesmeister, Police Chief Nick Jones, Library Director Rob Doughty, Planning Manager Steve Miller, Asst. Planner, Rowan Mairano, City Attorney Chris Crean (via Zoom)

### 1 LOGIN INFORMATION TO ATTEND VIA ZOOM

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### 2 CALL TO ORDER at 7:05

### 3 PLEDGE OF ALLEGIANCE

### 4 ROLL CALL

- a) Councilor Rickey Smith excused.  
Councilor Cameron Martinez attended via Zoom.

**5 CONSENT AGENDA:**

(The items on the Consent Agenda are normally considered in a single motion. Any item may be removed for separate consideration upon request by any member of the Council.)

- a) [Approval of August 26, 2024, Special Session agenda.](#)
- b) [Approval of minutes of August 5, 2024, Council meeting](#)
- c) [Res. No. 2276 - Reappointing Burns, Gaynor and King to the Parks & Recreation Board](#)

***Mayor Lenahan moved Item 8A - Resolution No. 2278 to before Item 7A Public Hearing***

***Motion to approve the Consent Agenda with the change above.***

Moved by Councilor Sheldon. Second by Councilor Papen.

Motion was approved unanimously.

**6 PUBLIC COMMENT: None**

**7 RESOLUTIONS:**

- a) [Res. No. 2278 - Early Literacy Specialist FT Library Position](#)

Library Director Robin Doughty briefly went over her staff report and answered questions regarding Resolution No. 2278.

***Move to adopt Resolution No. 2278 creating an Early Literacy Specialist Full-time Library Position***

Moved by Councilor Sheldon. Second by Councilor Fage.

Motion was approved unanimously.

**8 PUBLIC HEARING:**

- a) [City File CUP 24-018, DR 24-019, AP 24-024](#)

Mayor Lenahan read the public hearing script and opened the public hearing at 7:19 pm.

Mayor Lenahan asked for any ex parte communications, bias or conflict of interest that any of the councilors need to declare.

Councilor Trista Papen said that she had a resident email her regarding this topic but said she can still be fair and impartial.

Mayor Teri Lenahan said that she had a resident speak to her regarding this topic, as well, but said that she can still be fair and impartial.

Interim City Manager Rob Drake addressed a letter that Planning Commission Chair Stewart King sent to the mayor and the councilors prior to tonight's meeting.

Planning Manager Steve Miller provided a Power Point presentation for this public hearing.

Councilors asked question of Mr. Miller after his presentation.

City attorney Chris Crean gave a brief overview of the requirements of the city to send written notice (according to state Measure 56) to every property owner affected by a zone change within the city limits when the change limits or prohibits uses

previously allowed in the zone. It does not require a notice if it is expanding the use of property within a zone. Mr. Crean said that this type of notice was not required in this instance.

Questions and discussion ensued. The key issue focused on the interpretation of the park buffer distance and how it is measured.

Applicant - Brian Bergman, owner of Dispenserve LLC along with his legal counsel, Alex Berger, provided testimony including the fact that they began looking at North Plains as a site for this business back in 2015. They noted that they have three other businesses like this one in Seaside, Newberg, and Monmouth, noting that they have never had any Oregon Liquor Control Commission (OLCC) violations at any of the sites during the 10 years that they have been in business. Berman said they would like a fair opportunity to bring their business into North Plains.

No public testimony in favor.

Four people gave verbal testimony in opposition of allowing the business in North Plains:

Don Weber - North Plains resident

Mike Shurts - North Plains resident

Bethany Nelson - North Plains resident

Stewart King - North Plains resident and Planning Commission Chair

Applicant rebuttal: Mr. Berger said that the city code is ambiguous.

City staff, including the Planning Manager as well as Chris Crean, legal counsel, provided information on Oregon state law and how it differs from the city's law. Mr. Crean noted that other cities measure their distances both ways; walking/driving distance, as well as a straight line (as the crow flies) distance.

Questions and discussion ensued.

Closed the Public Hearing at 8:49 pm.

The council discussion continued. Mayor Lenahan said that nobody, including the Planning Commission, City Staff, and City Council caught the fact that the way the distance is measured was never made clear in the city code. Several councilors said that they are not opposed to a dispensary in North Plains, but because the code is not clear they cannot approve the business until the code is updated and clarified.

***Move to uphold the denial of the marijuana dispensary by the Planning Commission. Appeal is denied.***

Moved by Councilor Fage. Second by Councilor Martinez.

Motion was approved unanimously.

## 9 CITY MANAGER REPORT

a)

Interim City Manager Rob Drake said that he enjoyed attending the Elephant Garlic Festival.

Mr. Drake said that the process to find a new city manager is moving along with Prothman, letting him know that they have received 23 applications to date and they consider half of the applicants to be strong candidates.

The finance position has been filled with the person hired starting Monday, September 16, 2024.

**10 COUNCIL REPORTS**

a) **Review September 2024 Council Calendar**

b)

Councilor Fage was scheduled as ex officio at the August 21st Library Board meeting but they did not have a quorum, so Library Director Robin Doughty is looking to reschedule the meeting to August 28th. Councilor Russ Sheldon said he will be able to attend the meeting on August 28, 2024, as the ex officio.

Councilor Fage will be attending the Citizens Academy at the fire station in North Plains on September 27, 2024.

Councilor Cameron Martinez attended the August 7, 2024, EDC meeting, where they are working on a survey for local businesses to gather information on how the city can help businesses to succeed, as well as to bring new business into North Plains. The Chamber of Commerce board members will be attending the September 4, 2024, EDC meeting to work together on this topic.

At the August 12, 2024, Parks & Rec Board meeting the discussion was on the plan for parks in Phase 5 in the Brynhill subdivision.

Councilor Trista Papen attended a bus tour with the Washington County Policy Advisory Board. Councilor Papen said the tour was very informative and noted that there will be a ribbon cutting ceremony on September 7, 2024, for the new Drake Learning Center & Makerspace for STEM instruction in the Cornelius Library building. The center is named after Rob Drake, our current interim City Manager and former Cornelius City Manager where he was the driving force behind many successful community initiatives in Cornelius.

**11 ADJOURNMENT: 9:12 pm**

Next City Council meeting is TUESDAY, Sept. 3, 2024 (due to the Labor Day holiday) at 7pm.

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Teri Lenahan, Mayor

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Lori Lesmeister, City Recorder

Date Approved \_\_\_\_\_



# Proclamation

## October ~ Domestic Violence Awareness Month

**Whereas**, domestic violence is a serious crime that affects people of all races, ages, gender identities, socio-economic levels, religions, backgrounds, beliefs and abilities; and

**Whereas**, domestic violence includes physical, emotional, social, sexual, spiritual, financial and digital abuse; and can occur between family members, intimate partners and within dating relationships; and

**Whereas**, domestic violence is widespread and it is estimated that over 12 million Americans are affected each year, and more than one in three women and one in four men in the United States report having experienced domestic violence, stalking, sexual assault or physical assault by an intimate partner during their lifetime; and

**Whereas**, one in fifteen children are exposed to intimate partner violence each year, and 90 percent of these children are eyewitnesses to this violence and children that grow up in violent homes are believed to be abused and neglected at a rate higher than the national average, often resulting in lifelong trauma; and

**Whereas**, intimate partner violence accounts for 15 percent of all violent crime, at least 19 percent of reported domestic violence involves the use of a weapon, and the presence of a gun in a domestic violence situation increases the risk of homicide by 500 percent; and

**Whereas**, in 2022 the Family Justice Center in Washington County provided 8,344 services to 4,537 survivors; and

**Whereas**, domestic violence costs the nation over 8.3 billion dollars annually in medical expenses, police and court costs, shelters, foster care, sick leave, absenteeism, and non-productivity; and

**Whereas**, our law enforcement officers put their lives at risk daily responding to domestic violence incidents and the North Plains Police Department believes only a coordinated community effort will put a stop to this cycle of violence; and

**Whereas**, Domestic Violence Awareness Month provides an excellent platform to show support for the domestic violence advocates, crisis hotline staff, victim service organizations, and law enforcement officers in our community and provides the residents of Washington County the opportunity to learn more about preventing domestic violence and show support for the numerous organizations and individuals who provide critical advocacy, resources, hope and assistance to victims;

**Now, therefore** I, Teri Lenahan, Mayor of North Plains, Oregon, do hereby proclaim the month of October 2024, as: **DOMESTIC VIOLENCE AWARENESS MONTH** in North Plains

*Signed this 16th day of September 2024*

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Teri Lenahan, Mayor



Date: September 16, 2024  
To: Mayor Lenahan and City Councilors  
From: Robin Doughty, Library Director  
Subject: Monthly Staff Report

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### ANNOUNCEMENTS:

The **WCCLS Funding & Governance** project team will present their assessment of the current state of the cooperative to the Board of Commissioners in a fall work session, likely next month. Merina & Co. is the consulting firm engaged for this project and their data-driven assessment of our current state emerged from survey feedback, library tours, and comprehensive data and budget analyses combined with collaborative in-person work sessions with city managers, nonprofit library executives, and library directors.

The library celebrates **National Hispanic Heritage Month September 15<sup>th</sup> – October 15<sup>th</sup>** joining The Library of Congress, National Archives and Records Administration, National Endowment for the Humanities, National Gallery of Art, National Park Service, Smithsonian Institution, and United States Holocaust Memorial Museum to pay tribute to the generations of Hispanic Americans who have positively influenced and enriched our nation and society. Enjoy virtual exhibits and resources from the Smithsonian here: [Hispanic Heritage Month Resources | National Museum of the American Latino \(si.edu\)](#)

Our new **Community Engagement Specialist**, Jenni Perez, approaches her role with enthusiasm and good humor. She's already making it around town visiting the Food Pantry, the Dog Park Ribbon Cutting, the Library Outpost, and this month's Chamber meeting. Jenni is a wonderful addition to our library team!

### FEATURED PROGRAMS:

**A Long Road to Home -Share Your Story: A Celebration of Diverse Voices, with Judith Ortega. Thursday, September 19th, 7:00-8:30 p.m. at North Plains Public Library** Join us for an evening of storytelling & connection, celebrating the diverse journeys that have brought members of our community to the United States. King Torta food will be served at the event. *Funding for this program is provided by the National Endowment for the Humanities, Oregon Cultural Trust, Susan Hammer Fund of the Oregon Community Foundation, and Oregon Humanities corporate supporters.*

**New Digital Navigator in-person assistance** In cooperation with Washington County and AmeriCorps, the library will have a **Digital Navigator** on site every other Tuesday in October from 4:00 p.m. to 7 p.m. to assist community members with questions about access and use of devices, the internet, and digital resources. October dates are the 1<sup>st</sup>, 15<sup>th</sup>, and 29<sup>th</sup>.

# NORTH PLAINS PUBLIC LIBRARY

## MONTH-AT-A-GLANCE

**2024**  
**AUGUST**

### COLLECTION

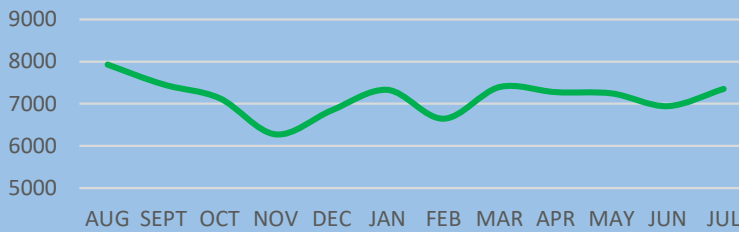
**BORROWED FROM OUR LOCATION:**

**7,140**

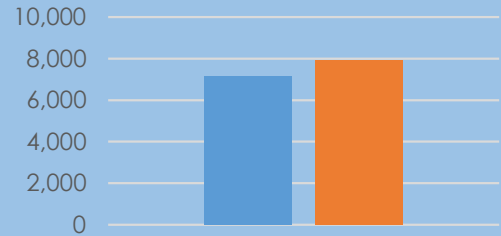
**SAME MONTH, LAST YEAR:**

**7,930**

Checkouts: Last Twelve Months



Same Month, Last Year



Items Added to Our Local Collection

**317**

Holds Sent

**6,048**

Holds Received

**4,232**

### USAGE AND PATRONAGE

**OPEN HOURS:**

**233**

**VISITORS:**

**3,763**

*SAME MONTH, LAST YEAR:*

3,542

### NEW PATRONS

**16**

**ITEMS BORROWED FROM THE NPPL COLLECTION:**

**8,755**

**HOURS OF FREE COMPUTER AND INTERNET ACCESS:**

**441**

### PARTICIPATION

|                              | PROGRAMS        | BOOK BABIES | PRESCHOOL STORYTIME | EARLY LITERACY CLASSES |
|------------------------------|-----------------|-------------|---------------------|------------------------|
| # OF SESSIONS                | 1               | 1           | 2                   | 2                      |
| ATTENDEES                    | <b>16</b>       | <b>33</b>   | <b>71</b>           | <b>71</b>              |
|                              | VOLUNTEER HOURS |             | STAFF HOURS         |                        |
| THIS MONTH                   | <b>192</b>      |             | <b>933</b>          |                        |
| <i>SAME MONTH, LAST YEAR</i> | 405             |             | 1,044               |                        |



**Washington County**  
Cooperative Library Services





Date: September 16<sup>th</sup>, 2024  
 To: Honorable Mayor and City Council  
 From: Nick Jones – Chief of Police  
 Subject: Police Chief Staff Report

Calls for service (August 2024): NPPD Officers responded/self-initiated to 229 calls for service. These calls include but are not limited to dispatched calls for service, investigative stops, community contacts, assist person calls and city ordinance violations.

August 2024:

NP police assisted with the Garlic Festival and the associated parade. There have been no police reports associated with the festival. There was an isolated disturbance nearby that stemmed from the festival but was resolved quickly. As in years past, we utilized the assistance of the Sheriff's Office Incident Management Team along with a mobile command vehicle. Their assistance has been vital in helping NPPD ensure a safe event for all.

NPPD was awarded a High Visibility Overtime Enforcement grant from ODOT for FFY2025. This grant will fund overtime traffic enforcement specifically targeting impaired driving, seatbelt enforcement, pedestrian safety, speed enforcement, and distracted driving.

***(R-Reports/Y2-Warnings/Y3-Citations/TS-Traffic Stop/PD-Public demand/SI-Self initiated)***

**Contract *Deputies Activities*** (Only NP deputy activities in All of the county)

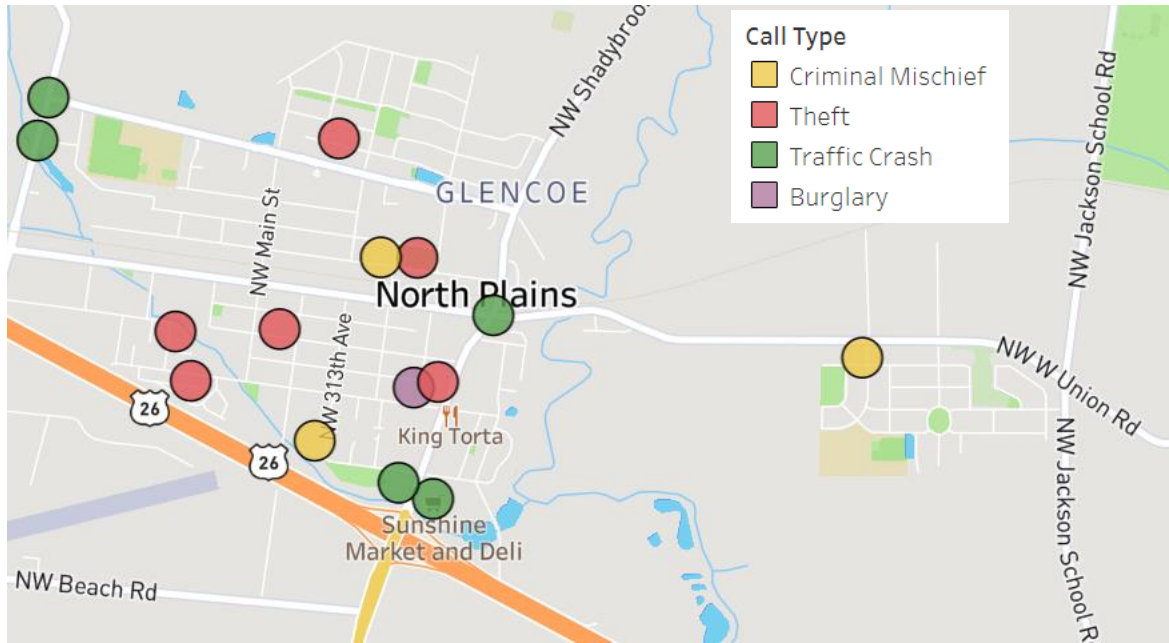
| Year | Month  | R  | Y2 | Y3 | TS | PD  | SI  | Total |
|------|--------|----|----|----|----|-----|-----|-------|
| 2024 | August | 19 | 22 | 1  | 19 | 65  | 149 | 214   |
| 2023 | August | 21 | 44 | 2  | 43 | 90  | 203 | 293   |
| 2022 | August | 26 | 18 | 3  | 21 | 79  | 94  | 173   |
| 2021 | August | 28 | 20 | 3  | 21 | 121 | 86  | 207   |
| 2020 | August | 29 | 56 | 17 | 70 | 95  | 146 | 241   |

**North Plains *Calls in the City*** (All police activities within NP)

| Year | Month  | R  | Y2 | Y3 | TS | PD  | SI  | Total |
|------|--------|----|----|----|----|-----|-----|-------|
| 2024 | August | 18 | 24 | 3  | 24 | 68  | 161 | 229   |
| 2023 | August | 17 | 45 | 2  | 44 | 94  | 219 | 313   |
| 2022 | August | 26 | 25 | 1  | 26 | 88  | 112 | 200   |
| 2021 | August | 30 | 11 | 3  | 13 | 136 | 83  | 219   |
| 2020 | August | 26 | 34 | 12 | 43 | 109 | 118 | 227   |
| 2019 | August | 23 | 14 | 4  | 14 | 74  | 148 | 222   |



North Plains **Calls for Service Map** (July 2024 – August 2024)





Date: September 11, 2024  
To: Honorable Mayor and City Council  
From: Dustin Lueckenotte – Public Works Director  
Subject: Public Works Staff Report

Public Works Operations:

- Routine water distribution system and other maintenance activities
- Lead and Copper Service Line Inventory wrapping up for EPA's 10/16 deadline

CIP Projects (Current/Upcoming):

- Public Works Facility
  - Flooring/Carpet/Cabinets in place
  - Asphalt pavement around 9/19
- 313th St Improvements (Kerr)
  - Substantially complete, some minor punch list items to be completed
- Glencoe/Commercial Sidewalk Improvements (Subcom)
  - Substantially complete, some minor punch list items to be completed
- Pacific Dog Park
  - Grand Opening was 9/6/24
- Other projects are in planning/design phase
  - Jessie Mays Perimeter, 309<sup>th</sup>, 311<sup>th</sup> Improvements (90% design)
    - Waiting on Railroad review/approval
  - Pacific Street Improvements (90% design)
  - Main Street Improvements (90% design)
  - Aquifer Storage & Recovery (ASR) Study underway
    - OWRD Grant expiration coming 9/30
    - Will be requesting an additional 100 day extension to 1/8/2025
  - Small City Allotment (2025)
    - Application already submitted for next year: Hillcrest Overlay

Other:

- AMI Feasibility Study still underway
- Water System Survey (5 year audit)
  - Tentatively scheduled for first week in October



Date: September 11, 2024  
To: City Council  
From: Steve Miller, Planning Manager  
Subject: September Staff Report

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## **PLANNING**

### **1. GreenLight Development – Brynhill 2-Acre Site**

- GreenLight Development has informed Staff that they will be submitting a Type III Design Review application on Tuesday, September 17<sup>th</sup> for the development of the 2-acre parcel in Brynhill. Staff anticipates there will be some form of mixed-use associated with the project based on past conversations.

### **2. IPU Sign Code**

- It was recently brought to Staff's attention that we have a deficiency in our IPU sign code that was not addressed when we did the sign code text amendment. Specifically, we would like to allow for ground mounted signs in the IPU zone. We already have some form of these types of signs on property zoned IPU (i.e. Atfalati Ridge Elementary School, North Plains Christian Church, and Post Office). In addition, the city would also like to install a ground mounted sign at the new Public Works Facility, which is zoned IPU, but surrounded by land zoned M-2. We will be bringing this text amendment before the PC within the next 35-40 days.

### **3. Addressing.**

- The Planning Staff met with the wonderful Staff at the City of Cornelius on August 27<sup>th</sup> to discuss all things related to addressing. North Plains has been struggling with a lack of addressing knowledge for a while, so it was great to get that hole patched up.

### **4. Miscellaneous/Code Enforcement**

- Nothing new to report on at this time.

**Building Permits  
August - 2024**

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| PERMIT TYPE | PERMIT # | DATE RECEIVED | Subproject: BP TYPE: NEW HOME/FP/DEMO/ELECTRICAL/etc | APPLICANT                                   | DESCRIPTION/TYPE                       | ADDRESS                |
|-------------|----------|---------------|--|---|--|------------------------|
| BP          | 24-133   | 8/1/2024      | AC Installation                                      | Columbia NW Heating & AC - Anne Murphy      | Type 1 - BP for AC Install             | 31404 NW Yorkshire St. |
| BP          | 24-134   | 8/1/2024      | AC Installation                                      | Columbia NW Heating & AC - Anne Murphy      | Type 1 - BP forAC Install              | 10190 NW 312th Pl.     |
| BP          | 24-135   | 8/2/2024      | Solar Panel Installation                             | Blue Raven - Diana Sanchez                  | Type 1 BP for Solar Panel Installation | 30951 NW Yorkshire St. |
| BP          | 24-136   | 8/8/2024      | St. Edward Catholic Chruch - Addition                | Doug Circosta, Architect                    | Type I Building Permit - Addition      | 10990 NW 313th Ave.    |
| BP          | 24-137   | 8/15/2024     | AC Installation                                      | Specialty Heating & Cooling - Jake Martinez | Type 1 - BP for AC Install             | 31062 NW Timeric St.   |
| BP          | 24-138   | 8/20/2024     | AC Installation                                      | Columbia NW Heating & AC - Anne Murphy      | Type 1 - BP for AC Install             | 31077 NW North Ave     |
| BP          | 24-139   | 8/20/2024     | Building Permit - New Home                           | Faster Permits - Bradley Vaughan            | Type 1 - BP for New Home               | 31590 NW Lenox St.     |
|             |          |               |  |   |  |                        |
|             |          |               |  |   |  |                        |

**Building Permits  
August - 2024**

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| PERMIT TYPE | PERMIT # | DATE RECEIVED | Subproject: BP TYPE: NEW HOME/FP/DEMO/ELECTRICAL/etc | APPLICANT                                   | DESCRIPTION/TYPE                       | ADDRESS                |
|-------------|----------|---------------|--|---|--|------------------------|
| BP          | 24-133   | 8/1/2024      | AC Installation                                      | Columbia NW Heating & AC - Anne Murphy      | Type 1 - BP for AC Install             | 31404 NW Yorkshire St. |
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| BP          | 24-139   | 8/20/2024     | Building Permit - New Home                           | Faster Permits - Bradley Vaughan            | Type 1 - BP for New Home               | 31590 NW Lenox St.     |
|             |          |               |  |   |  |                        |
|             |          |               |  |   |  |                        |



Date: September 11, 2024  
 To: City Council  
 From: Bill Reid, Finance Director  
 Subject: Finance Department Monthly Report – Month Ending August 31, 2024

This memorandum is intended as a snapshot of how City of North Plains expenditures and revenues compare to the FY2023-25 biennial budget through August 31, 2024. This report specifically summarizes activity to-date for all Operating Funds after 14 months of the FY 2023-25 biennium. Other Finance topics of monthly City Council interest are also discussed.

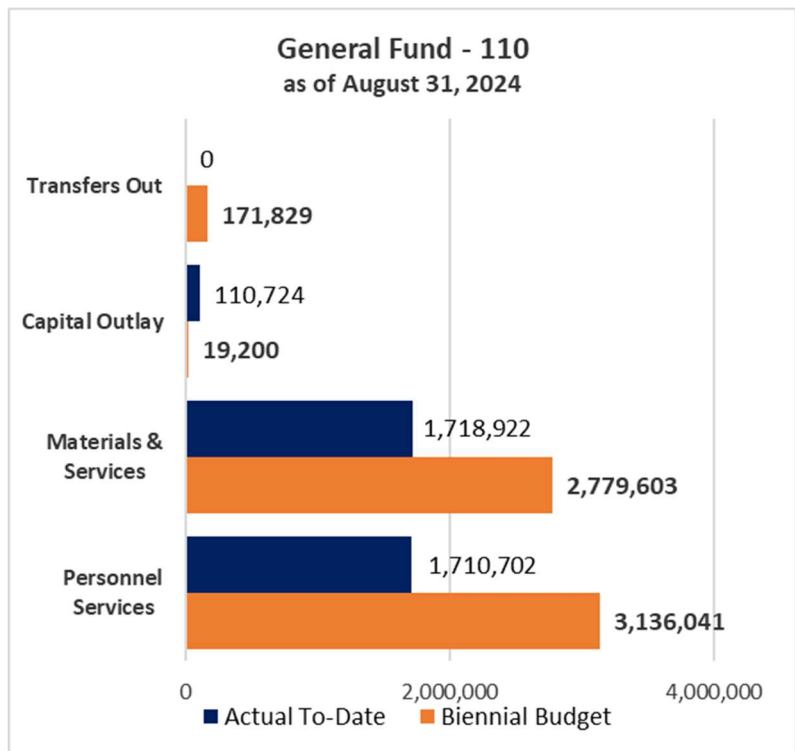
**OPERATING FUNDS: GENERAL FUND (110), STREETS FUND (111), WATER FUND (210) AND JESSIE MAYS FUND (310)**

**General Fund (110) Summary**

Total General Fund expenditures through August 31, 2024 were \$3.54 million, which amounts to 99% of budget to-date in the biennium.

With few remaining FY24 invoices goods or services still outstanding, we still expect that expenses for the first half of the biennium were slightly below expected budget.

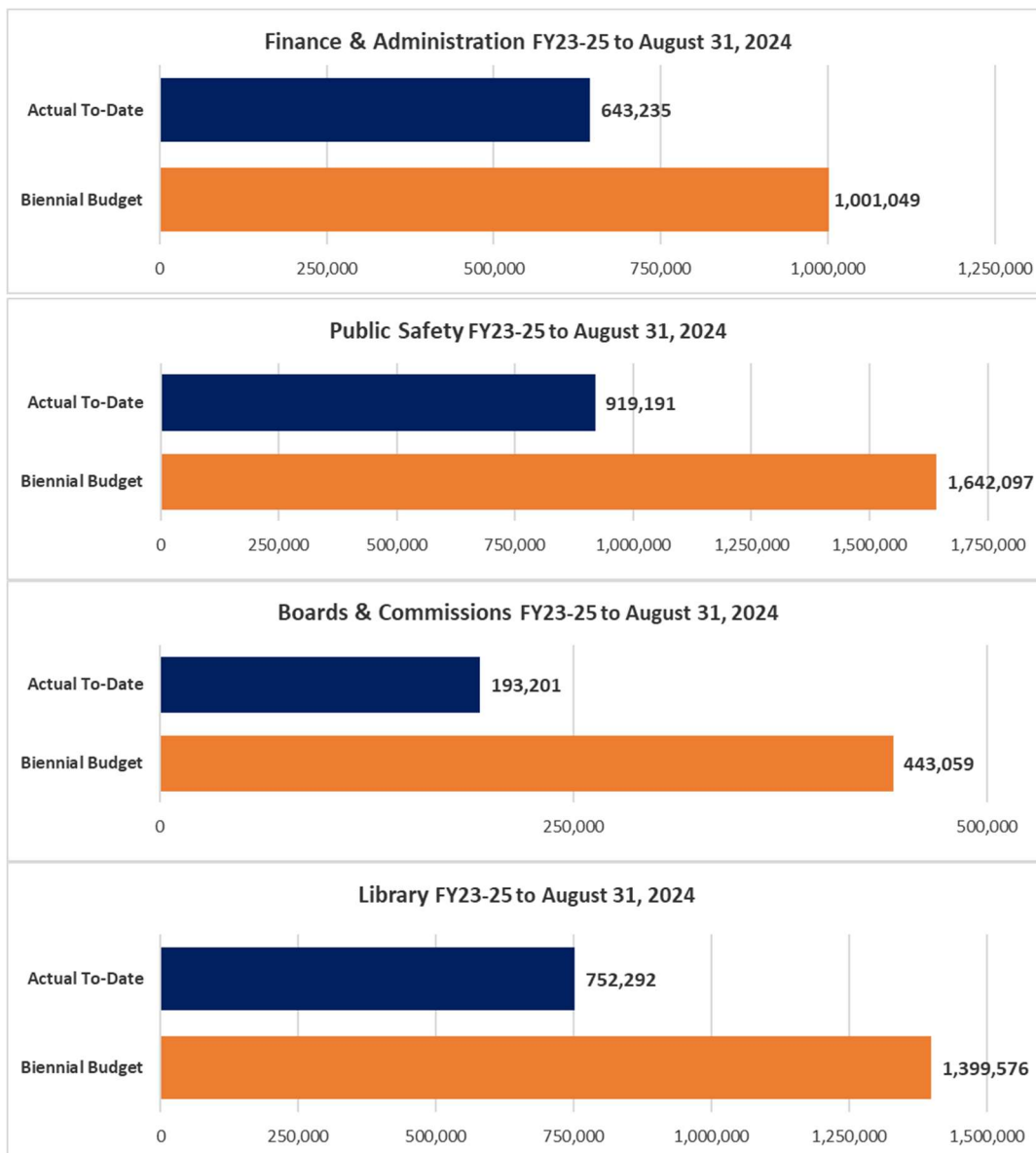
A supplemental budget potentially for Public Safety, Finance & Administration, and Community Development for speed radar signs, IT services, and UGB planning expenses, respectively, may be needed before end of the biennium. Those subfunds are most closely tracked due to their high service activity for the City. Different accounting for grant funds awarded and spent by the Library is also continued to be expected after the arrival of our new Accountant on September 16<sup>th</sup>.

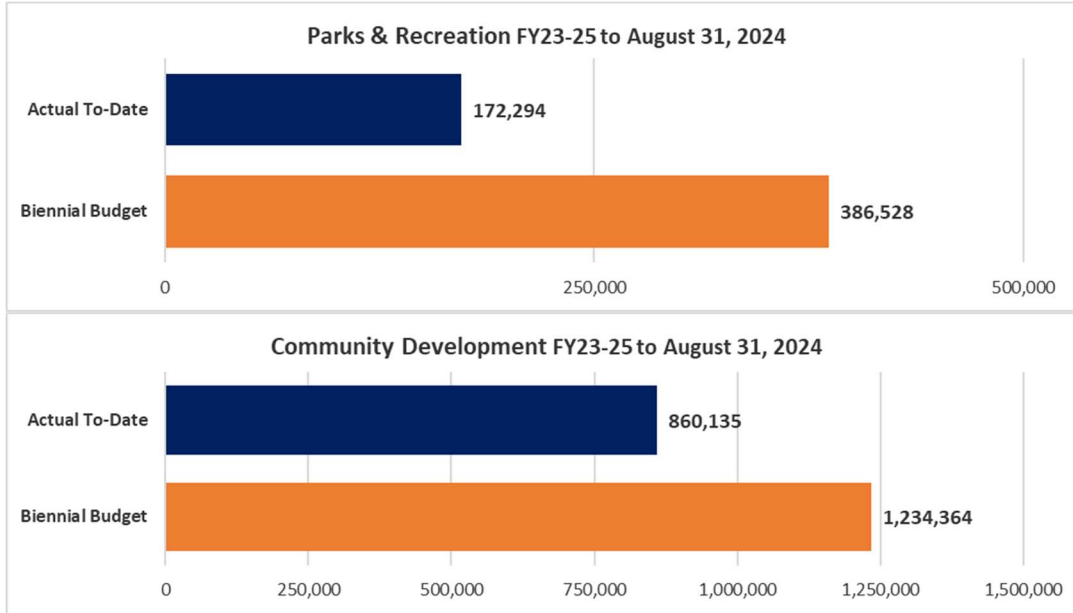




### General Fund Departments Detail

Biennial budget vs. expenditure to date is summarized for each General Fund department on this page. Like previous months' reports, all departments except Finance & Administration and Community Development have spent less than budget to-date, but all are within full budget for the biennium.

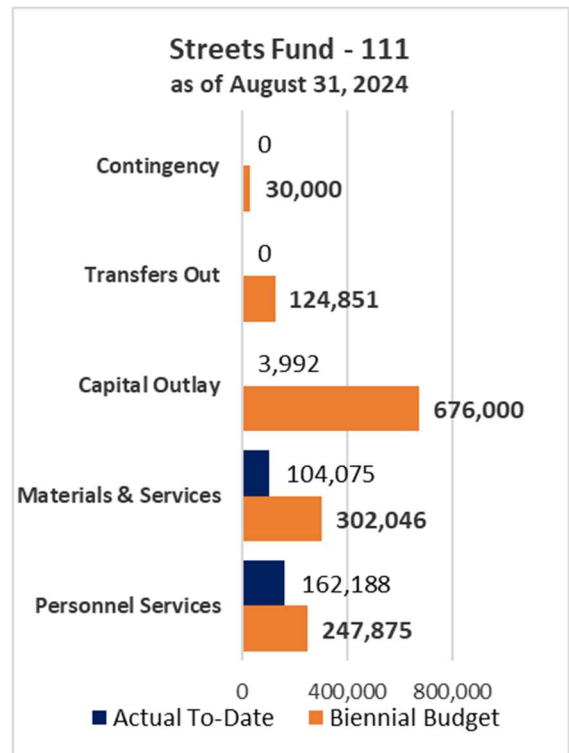




### Streets Fund (111) Summary

As of August 31, 2024, Streets Fund expenditures totaled \$270,255 after fourteen months of the biennium (34% of budget to date). Personnel followed by Materials & Services comprised the nature of service costs.

\$598,644 in revenues have been posted through August 31, 2024 (98% of expected to-date). Most revenues were Intergovernmental such as gas tax shared revenues from the State and Washington County. In addition, the TUF has raised \$217,991 so far since July 1, 2023.

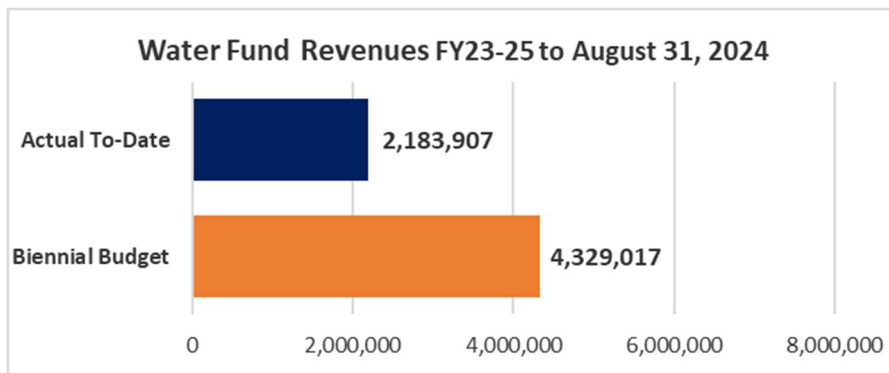
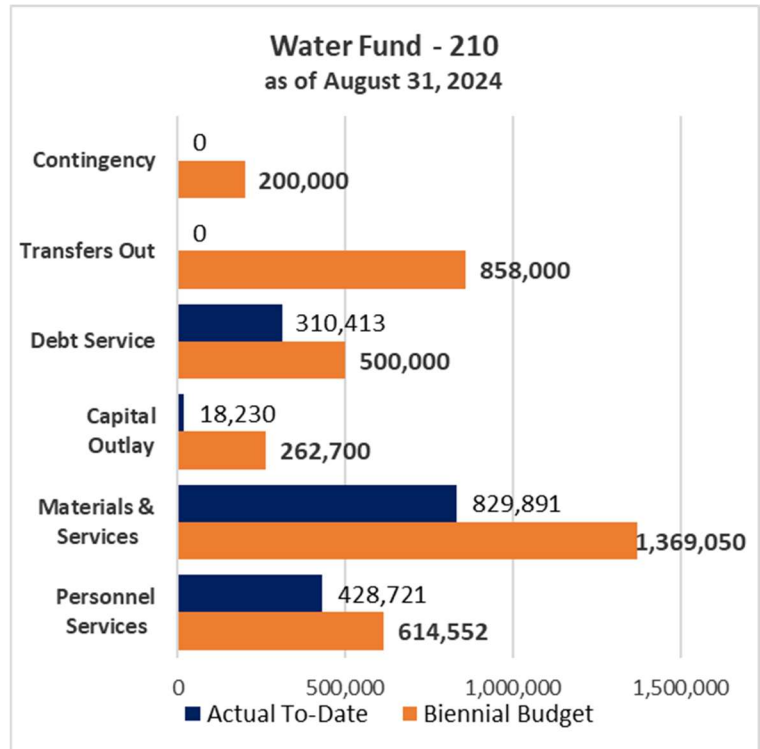




### Water Fund (210) Summary

The Water Fund recorded \$1.59 million in expenses through August 31, 2024 (72% of budget to date). Materials & Services then Debt Service led expenditure activity with Fund service provision to-date.

On the revenue side, the Water utility has brought in roughly \$2.18 million through the end of August (98% of expected to date). Revenues were at 93% of expectation at the end of June, so seasonal patterns continue to align revenues to budgeted expectation.

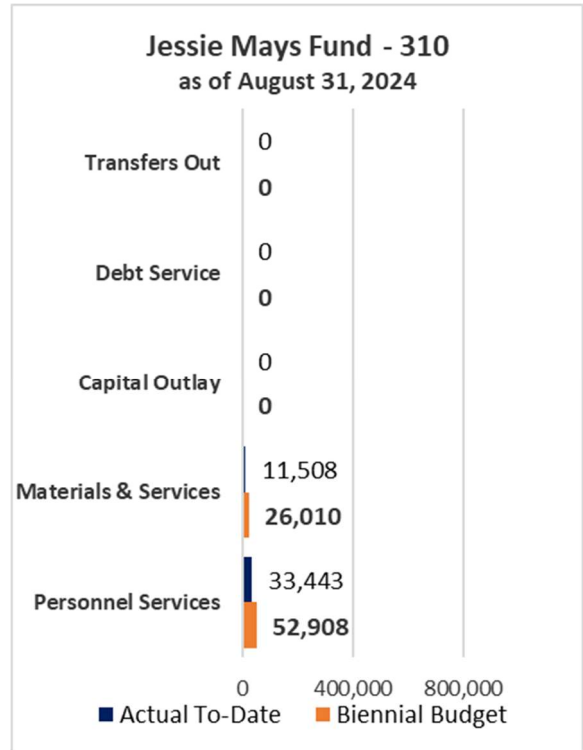




**Jessie Mays Community Center Fund (310) Summary**

Rentals of Jessie Mays continue to be limited since February due to facility issues, so financial performance of the fund has reflected that operational change. Rental revenues to-date have been \$10,405. Monthly, we optimistically projected that Jessie Mays would earn \$1,771 on average across the 24-month biennium.

Fund expenses have been \$44,951 to-date, 72% of that Personnel expense for staffing rental process, clean-up, and other related service needs.





**Finance Department Activities**

- Welcome our new Accountant: Kristen Gearhart:** Kristen joins the City officially on Monday September 16<sup>th</sup> as Accountant. She comes to us from the Metropolitan Area Communications Commission (MACC) where she was Finance Manager. She comes highly recommended with a breadth of experience in all facets of smaller public agency accounting, audit and financial management. We look forward to her hitting the ground running providing leadership on best practices and procedural improvements we've strived to accomplish.
- FY 24 Property Tax Receipts:** An additional \$2,010.82 was received in June of 2024, bringing the FY 24 total to \$874,594.95 for the City. That is a 12.5% increase over the prior year, or nearly \$100,000 more than FY23. The FY 23-25 biennial budget projected \$816,060 for FY 24.

|                           | (Calendar) | FY20                | FY21                | FY22                | FY23                | FY24                |
|---------------------------|------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| October                   | Month      | 52,709.63           | 49,554.83           | 88,538.13           | 95,028.92           | 110,434.90          |
| November                  | Week 1     | 106,320.97          | 65,283.92           | 107,544.46          | 36,734.53           | 41,639.02           |
|                           | Week 2     | 270,182.05          | 386,015.56          | 350,226.42          | 360,136.59          | 357,992.96          |
|                           | Week 3     | 114,260.56          | 102,471.13          | 125,093.00          | 185,925.60          | 216,841.66          |
|                           | Week 4/End | 5,142.46            | 16,476.09           | 5,604.55            | 55,748.37           | 94,896.43           |
| December                  | Month      | 8,057.44            | 10,600.62           | 7,467.17            | 10,728.05           | 13,609.22           |
| January                   | Month      | 2,307.11            | 4,486.87            | 4,675.52            | 2,584.09            | 2,300.59            |
| February                  | Month      | 10,750.81           | 12,495.43           | 9,911.76            | 12,791.62           | 16,341.89           |
| March                     | Month      | 836.92              | 1,828.44            | 1,602.62            | 1,871.27            | 3,133.49            |
| April                     | Month      | 1,426.11            | 2,269.34            | 2,464.96            | 2,446.11            | 2,649.17            |
| May                       | Month      | 11,080.26           | 0.00                | 9,077.51            | 13,106.81           | 12,744.80           |
| June                      | Month      | <u>1,512.50</u>     | <u>0.00</u>         | <u>1,606.05</u>     | <u>0.00</u>         | <u>2,010.82</u>     |
| <b>Total Received/YTD</b> |            | <b>\$584,586.82</b> | <b>\$651,482.23</b> | <b>\$713,812.15</b> | <b>\$777,101.96</b> | <b>\$874,594.95</b> |
| +/- over Previous         |            |                     | 11.4%               | 9.6%                | 8.9%                | 12.5%               |

- FY 22 & 23 audits continue.** Understaffing and transition activities have posed delays in coordination for financial statement completion and we do not yet have a firm, updated FY 22 audit completion date though we are inching very close. However, in the interest of maintaining momentum on both FY 22 and FY23 audits, the FY 23 audit process has been underway for a couple of months already. We have also already scheduled FY 24 audit process to start in the Fall.
- Fuel Tax Revenue Update:** The City collected \$13,768 in local fuel tax revenue during July and \$14,638 in August, bringing the biennium running total to \$182,466.



**Date:** September 16, 2024

**To:** Honorable Mayor and City Council

**From:** Rowan Maiorano, Assistant Planner

**Subject:** FEMA National Flood Insurance Program – Endangered Species Act Integration changes to floodplain development and pre-implementation compliance measures (PICMs).

---

As of July 16, 2024, FEMA Region 10 has initiated an effort to implement interim measures for the National Flood Insurance Program's (NFIP) compliance with the Endangered Species Act. A total 31 counties and 86% of the land area of Oregon will be affected by the interim measure requirements. Each affected community, including North Plains, must deliver a decision on which pre-implementation compliance measure (PICM) they will implement to the FEMA Region 10 team no later than December 1<sup>st</sup>, 2024, and implement the PICM no later than July 31<sup>st</sup>, 2025.

FEMA's NFIP broadly manages floodplain standards and collaborates with communities to develop local standards. As a result of this activity, NFIP is responsible for complying with the Endangered Species Act (ESA) and considering adverse effects to threatened and endangered species. In 2009, a lawsuit was brought against FEMA which sought to highlight agency failures to consider impacts to species protected by the ESA when implementing the NFIP in Oregon. As a result, NFIP began consultation with the National Marine Fisheries Services and in 2016, a Biological Opinion (BiOp) was issued. The BiOp concluded that NFIP implementation in Oregon was likely to jeopardize the continued existence of 16 fish species and the Southern Resident Killer Whale. The BiOp presents a Reasonable and Prudent Alternative (RPA) that would avoid continued jeopardy for the listed species and habitats when implemented.

The RPA consists of 6 elements: notice/education/outreach, interim measures, mapping, management, data, and enforcement. The matter which FEMA has brought before the affected communities pertains to interim measures. The interim measures phase is to be implemented from 2024 until the Environmental Impact Statement (EIS), which constitutes completion of NFIP-ESA Integration, is completed. FEMA has presented affected communities with three options for pre-implementation compliance measures (PICMs): prohibition of development in the floodplain, incorporation of a model floodplain ordinance, or permit-by-permit Floodplain Habitat Assessment.

Staff has attended two webinars presented by FEMA on the PICM options as well as discussing the matter with the City attorney. Based on the available information, Staff does not recommend Counsel proceed with the prohibition or the permit-by-permit PICMs. Outright prohibition of development across a large swath of properties is a significant action and may result in takings claims by property owners against the city. The permit-by-permit PICM requires that a Floodplain Habitat Assessment be submitted with every development application in the floodplain. The Floodplain Habitat Assessment must be prepared by a biologist and reviewed by someone with sufficient knowledge of the field. The guidance



documentation supplied by FEMA details an extensive assessment which would be the most comprehensive element of the application. This increases the burden on the Applicant and Staff who are reviewing the application. Staff have been in contact with other affected communities and agencies, including Washington County and Clean Water Services, who have expressed concern for the burden reviewing the assessment would place on staff. Washington County has discussed bringing in a consultant who would be made available to jurisdictions within the county. Overall, the permit-by-permit option requires more management and raises costs associated with the application that may not be covered by the assessed fee.

Staff recommends the Model Ordinance PICM due to the comprehensive nature of this solution and the relative simplicity of implementation. FEMA provided a model ordinance to affected communities in August which has since been thoroughly analyzed by the City's legal team and affected communities state-wide. The consensus among planning professionals and the City's legal team is that the model ordinance needs modification but should be able to be implemented by the July 31st, 2025 deadline. Implementation of the model ordinance requires more staff time up-front as the process will involve an in depth text amendment to be completed by the July deadline; however, reviewing floodplain applications under the model ordinance will not be any more laborious than it is under current ordinance, saving Staff time and resources.

**Request:** Staff requests City Counsel be prepared to select a PICM option at the October 7<sup>th</sup> City Counsel Meeting.



# **Floodplain Habitat Assessment and Mitigation**

## **Regional Guidance for Oregon**

August 2024



**FEMA** Region 10

# **Regional Guidance For Floodplain Habitat Assessments and Mitigation in Oregon**

**Produced by FEMA - Region 10  
August 2024**



**FEMA**  
**Region 10**

**For additional information or copies of this guidance:**

Federal Emergency Management Agency

Attn: Mitigation Division

Federal Regional Center, Region 10

130 228th St. SW

Bothell, WA 98021-9796

(425) 487-4600

[www.fema.gov/regionx/nfipesa.shtm](http://www.fema.gov/regionx/nfipesa.shtm)

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## **Acknowledgements**

This guidance document was developed by Region 10 of the Federal Emergency Management Agency, as part of its continuing effort to improve floodplain management practices and assist communities in meeting the requirements of the Endangered Species Act.

An earlier version of this document that was written solely for Puget Sound was drafted in 2010 by French & Associates, Ltd., Steilacoom, ESA Adolfson, Seattle, and PBS&J, Seattle, through an arrangement with the Insurance Services Office and the Community Rating System. Extensive edits were completed by FEMA Region 10 in 2013 in a document that was written solely for Puget Sound.

The 2018 Update was prepared by CDM Smith and FEMA Region 10.

The 2024 Update was prepared by FEMA Region 10 to address the interim measures for implementing the Oregon Biological Opinion.

## Acronyms

|       |  |
|-------|--|
| BA    | Biological Assessment                          |
| BE    | Biological Evaluation                          |
| BiOp  | Biological Opinion                             |
| CMZ   | Channel Migration Zone                         |
| DLCD  | Oregon Department of Land Conservation         |
| EFH   | Essential Fish Habitat                         |
| ESA   | Endangered Species Act                         |
| FEMA  | Federal Emergency Management Agency            |
| FIRM  | Flood Insurance Rate Map                       |
| FWHCA | Fish and Wildlife Habitat Conservation Areas   |
| HA    | Habitat Assessment                             |
| HPA   | Hydraulic Project Approval                     |
| IPaC  | Information for Planning and Consultation tool |
| JARPA | Joint Aquatic Resources Permit Application     |
| JPA   | Joint Permit Application                       |
| NFIP  | National Flood Insurance Program               |
| NMFS  | National Marine Fisheries Service              |
| ODEQ  | Oregon Department of Environmental Quality     |
| ODSL  | Oregon Department of State Lands               |
| RBZ   | Riparian buffer zone                           |
| RPA   | Reasonable and Prudent Alternative             |
| SFHA  | Special Flood Hazard Area                      |
| USACE | United States Army Corps of Engineers          |
| USFWS | United States Fish and Wildlife Service        |

# 1.0 Introduction

## 1.1 Background

This Regional Guidance is written to assist communities in meeting the requirements and criteria of the Endangered Species Act (ESA) regarding the National Flood Insurance Program (NFIP). Those requirements are described in Biological Opinions (BiOp) issued by the National Marine Fisheries Service (NMFS) April 14, 2016, and the January 2017 errata document that supplements the BiOp for most of the State of Oregon.

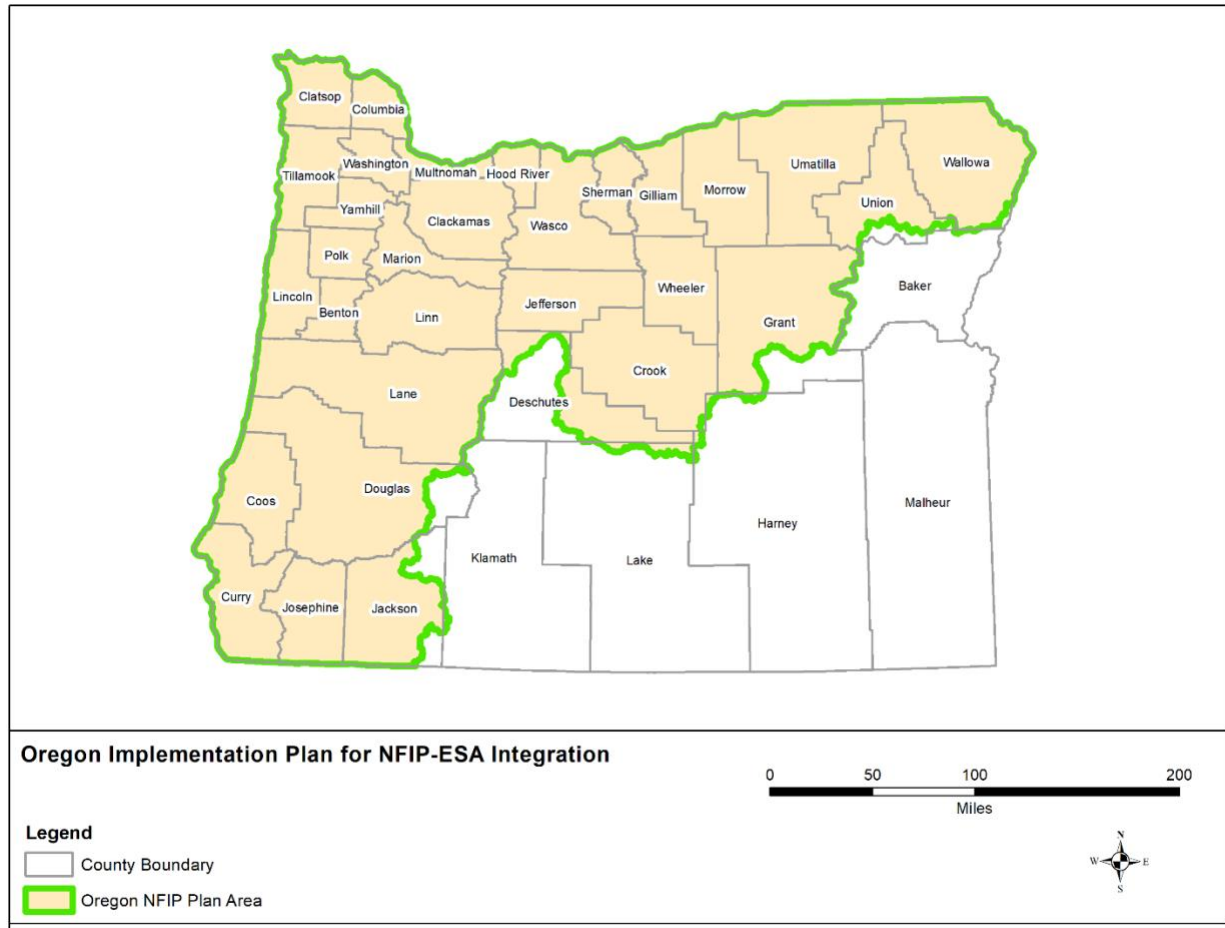


Figure 1 Oregon National Flood Insurance Program Plan Area for Endangered Species Act Integration

This guide is a companion to the BiOp for Oregon and the ESA Consultation Handbook (NMFS and USFWS 1998). It is intended to assist environmental planners, fisheries biologists, and other qualified floodplain and river management professionals who may potentially write or review habitat assessments (HAs). This document focuses on requirements specific to Oregon. It provides information on methods that communities may utilize to assess the impacts of land

management actions on ESA-listed species and their designated critical habitats within the Special Flood Hazard Area (SFHA).

This document is also designed to support the NFIP-ESA 2024 Draft Model Ordinance prepared by the Federal Emergency Management Agency (FEMA) Region 10. This guidance is offered to help communities comply with the interim measures in the Reasonable and Prudent Alternative (RPA) element 2 while FEMA works towards full implementation of the NMFS BiOp.

For further details on the BiOp's requirements, see the [BiOp and RPA for Oregon](#). The Model Ordinance and additional guidance documents are also available from FEMA Region 10.

Communities in Oregon have two options to implement the interim measures of the BiOp: adopting the Model Ordinance under a hybrid programmatic habitat assessment approach or using a permit-by-permit approach. Sections of the Model Ordinance are referenced in this guidance to help the reader match the requirements of the BiOp with NFIP regulations. Additional references included in this guidebook are listed at the end of the document.

The RPAs set forth for Oregon under the BiOp include an expanded timeframe for implementation to account for state-wide implementation and potential changes in FEMA policy and guidance. The RPAs also allow for compensatory mitigation of adverse effects within the SFHA.

This revised 2024 habitat assessment guidance will help jurisdictions assess and document ESA compliance reviews. It is intended to be useful to those jurisdictions who are complying with the requirements of the interim elements of the RPA in Oregon through adoption of the model ordinance.

Regardless of which compliance option is selected, the objective is to avoid adverse effects and ensure no net loss to ESA-listed species and their designated critical habitats by protecting those species and the natural functions of their designated critical habitats.

The preparation of this guidance was informed by technical input from local officials, engineers, natural resource scientists, and planners. It is designed to assist qualified habitat professionals, representing both permit applicants and permit officials, in ensuring that any adverse impacts from actions occurring anywhere within the Oregon Special Flood Hazard Area will be mitigated to a no net loss standard. This guidance is focused on ESA-listed species utilizing habitats in flood-prone areas, including those areas associated with streams, lakes, and marine waters.

The 2016 BiOp and 2017 errata for the NFIP in Oregon apply to 16 ESA-listed fish species and the Southern Resident killer whale. However, the Model Ordinance and this guidance may also help guide assessment of potential impacts from project actions on bull trout (administered by the U.S. Fish and Wildlife Service [USFWS]), which are currently listed as threatened or endangered. In Oregon, bull trout are found in the Columbia River and many of its tributaries. The

assessment of impacts on other fish species that may become candidates for ESA listing may also be warranted, to ensure that project proposals adequately address their needs if they become formally listed while a project is still underway. This assessment guidance does not, however, provide details on possible methods of how to assess impacts to any ESA-listed wildlife, invertebrate, or plant species that may be present, nor impacts to their habitats.

## 1.2 Definitions

Three terms are used in this guidance and the Model Ordinance, that may not be the same terms used in a community's regulations: "Riparian Buffer Zone" and "development." These terms are defined in the Definitions section of the Model Ordinance Language (Section 2.0).

The **SFHA** is the land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as Zone A, AO, AH, A1-30, AE, A99, AR (V, V1-30, VE).

The **Riparian Buffer Zone** is measured from the ordinary high water line of a fresh waterbody (lake; pond; ephemeral, intermittent, or perennial stream) or mean higher-high water (MHHW) line of a marine shoreline or tidally influenced river reach to 170 feet horizontally on each side of the stream or 170 feet inland from the MHHW. The riparian buffer zone includes the area between these outer boundaries on each side of the stream, including the stream channel. Where the RBZ is larger than the special flood hazard area, the no net loss standards shall only apply to the area within the special flood hazard area. The RBZ-fringe is the remainder of the SFHA that is outside of the RBZ.

**Development** is any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. The Oregon BiOp extends that definition to include subdivision of land, removal of vegetation, other alteration of natural site characteristics (including any remnant natural characteristics existing in a degraded site), substantial repairs and improvements, and the maintenance, repair, or remodel of existing buildings, facilities, and utilities when their existing footprint is expanded.

### **1.3 When to Conduct a Habitat Assessment**

Whenever a development project is proposed in the SFHA, the property owner must obtain a floodplain development permit from the community. Certain types of projects can be permitted relatively quickly (see “Allowed Activities” below). Unless a community’s floodplain management ordinance lists a project action type as exempt from the requirement to complete an HA (see Section 1.3.1), the project applicant must complete an HA that describes the impact of the proposed development on existing floodplain and instream habitat functions and processes. The scope and detail of that assessment may vary as needed to portray possible impacts for each project. If the anticipated project effects are clearly limited in nature and extent, it may be possible to describe them in a relatively short assessment. The greater the complexity, scope, and/or risk of possible impacts to ESA-listed species or their habitats, the more likely it will be that the HA will need to be an in-depth analysis, to portray impacts and describe planned mitigation, if needed.

#### **1.3.1 No Habitat Assessment Required**

There are four general circumstances where an HA would not be required:

1. Projects that are listed as exempt from conducting a habitat assessment in the BiOp for the NFIP in Oregon. These exemptions should be listed in the community’s ordinance (exempt situations are listed below).
2. Project actions that are covered under separate consultations under Section 4(d), 7, or 10 of the ESA.
3. Projects under consideration that have already been covered by a full programmatic habitat assessment of all current and reasonably foreseeable future conditions throughout a jurisdiction. (When such an assessment already exists, and the project clearly fits within the nature and scope of those project types that were addressed by it, then the jurisdiction need only document and track how they evaluated its eligibility for coverage by that assessment).

##### **1.3.1.1 No HA Required and No Floodplain Permit Required:**

Communities may allow the following activities in the floodplain without requiring a floodplain development permit, provided all applicable federal, state, and local requirements are met. A floodplain permit is not required because these activities do not meet the NFIP definition of “development.” Note: local community regulations may be more restrictive than the minimum standards (44 CFR 59).

- Routine maintenance of existing landscaping that does not involve grading, excavation, or filling.
- Removal of noxious weeds, hazard trees, and replacement of non-native vegetation with native vegetation.
- Normal maintenance of above and below ground utilities and facilities, such as replacing power lines and utility poles.

- Normal road maintenance, such as filling potholes, repaving, installing signs and traffic signals, but not including any expansion.
- Normal maintenance of a levee or other flood control facility, as prescribed in the operations and maintenance plan for the facility. Normal maintenance does not include repair from flood damage, any expansion of the prism, face or toe expansion, or the addition of material for protection or armor.
- Plowing and other normal farm practices (other than new structures or filling) on legally existing agricultural areas. Clearing additional land for agriculture will likely require a floodplain development permit and an HA.

### **1.3.1.2 Floodplain Permit Required and No HA Required**

Communities may allow the following activities in the floodplain without an HA, provided a floodplain development permit is obtained and all applicable federal, state, and local requirements are met.

- Normal maintenance, repairs, or remodeling of structures, such as re-roofing and replacing siding, provided such work does not constitute a substantial improvement or repair of substantial damage. To comply, the cost of such work must be less than 50 percent of the market value of the structure(s).
- Activities with the sole purpose of creating, restoring, or enhancing natural functions associated with floodplains, streams, lakes, estuaries, marine areas, habitat, and riparian areas, provided the activities meet federal and state standards and do not include structures, grading, fill, or impervious surfaces.
- Development of open space and recreational facilities, such as parks, trails, and hunting grounds, that do not include structures, fill, impervious surfaces, or removal of more than 5 percent of the native vegetation on the portion of the property located in the SFHA.
- Repair to onsite septic systems, provided ground disturbance is the minimal necessary and best management practices (BMP) are utilized to prevent stormwater runoff and soil erosion.
- Projects that have already received concurrence under another permit or other consultation with the Services, either through Section 7, Section 4d, or Section 10 of the ESA, that addresses the entirety of the project in the floodplain. Examples of other such permits include but are not limited to a U.S. Army Corps of Engineers (USACE) 404 permit.
- Repair of an existing, functional bulkhead in the same location and footprint with the same materials when the Ordinary High-Water Mark (OHWM) is still outside of the face of the bulkhead.

Projects that require a federal permit under Section 404 of the Clean Water Act would likely need to go through an ESA consultation process led by the USACE Regulatory Branch. The Section 404 permit process includes consultation with the U.S. Fish and Wildlife Service (USFWS),

and/or NMFS when a project may influence a federally listed species. Such consultation is required under Section 7 of the ESA. If a project has gone through this Section 7 process with USACE then a local HA would not be required.

A project is deemed to comply with the ESA if a permit applicant has prepared a Biological Evaluation (BE) or a Biological Assessment (BA) and has received concurrence from USFWS and/or NMFS as applicable for the species potentially present (via either a Letter of Concurrence or a BiOp) that covers the full scope of the proposed action. In such cases the additional HA requirements of this guidance are not required (see Section 7.7 of either of the Model Ordinances).

#### **1.4 Habitat Assessment Overview**

The habitat assessment needs to describe any impacts to habitat functions due to actions occurring within any part of the SFHA in the BiOps action area communities. The assessment must demonstrate that there will be no net loss to habitat functions in the SFHA.

The impact of a project on habitat functions and processes may be complicated to determine because there is often little or no information on the site's baseline (pre-project) natural features. A habitat assessment is needed to identify those natural functions and to complete an analysis that estimates what effects the proposed action will have on ESA-listed species and their critical habitats.

If the assessment finds that an adverse effect may occur due to impacts from the proposed action on ESA-listed fish species, Southern Resident killer whales, or their designated critical habitats, then the permit applicant must prepare a plan identifying the steps that the applicant will take to modify the proposed action to avoid adverse effects. Avoidance measures should be applied as the first priority. Then, measures to minimize or fully mitigate any unavoidable adverse impacts must be developed and applied to the project. Jurisdictions must be able to document the details of the mitigation plan and identify which mitigation measures are required rather than recommended. They must also be able to monitor and document the implementation and measure the effectiveness of the plan, track any enforcement actions taken, and provide that information to FEMA, if requested.

Any actions that would adversely affect ESA-listed species or their critical habitats within the BiOps action area SFHA must be fully mitigated. In the required descending order of preference, the mitigation sequence is avoidance, minimization, and mitigation. Applicants must explain and document why all preferable forms of mitigation were not practicable before proposing less preferable forms (e.g., mitigation over avoidance).

#### **1.5 Preparing and Reviewing a Habitat Assessment**

This guidance provides a step-by-step approach to complete a HA when an assessment is needed. The approach described in the following sections should provide sufficient information to assess

and document the likely effects of a proposed project, but it does not have to be followed exactly as described. However, if a different approach is followed, it must provide sufficient data and analysis to describe baseline conditions and likely effects on ESA-listed species and their designated critical habitat. It must conclude with an effects determination that is well supported by that analysis.

This guidebook is not intended to represent comprehensive instructions for how a jurisdiction should complete a comprehensive “programmatic” HA of existing conditions and impacts of community’s regulations across its entire jurisdiction (e.g., conditions within all watersheds in a jurisdiction). However, it helps describe the information that would be needed to complete such an extensive and inclusive programmatic assessment. Communities may conduct programmatic assessments with differing approaches based on their unique land uses, regulatory structure, available maps and data, and community goals. Communities may request technical assistance from FEMA when they draft programmatic habitat assessments or review assessments prepared by others for projects within their jurisdictions.

The guidance is also not intended to provide complete instructions for documentation and justification of how a jurisdiction’s existing regulations (and any planned changes to those regulations) comply with all the terms and conditions within the RPAs of the BiOp. It will be the responsibility of the jurisdiction to explain and document that information. This guidance is primarily intended to assist applicants in preparing an HA under the permit-by-permit approach listed in the Pre-Implementation Compliance Measures (PICM). Applicants may seek assistance from their local jurisdiction in preparation of the HA. If the project is complex, it is recommended that applicants begin with conceptual development plans and conduct a preliminary assessment before investing in detailed project plans and specifications. Continued communication with community staff will also help identify issues before significant time and/or money is spent on a project that may require additional mitigation measures or needs to be redesigned or abandoned. It may be appropriate for some communities with limited staff to request assistance from their neighboring jurisdictions, Tribes, or other partners to help assess the adequacy of draft HAs written on their behalf. This guidance document allows for flexibility in the format of many aspects of the HA. Reviewers of draft HAs should be familiar with the range of formats that adequately portray and interpret fisheries population and habitat survey data.

A permit applicant should weigh the cost of preparing an assessment and mitigation plan, should one be needed, against the cost of locating the project outside the SFHA. It may cost less in time and money to simply avoid the SFHA

## **2.0 Conducting the Assessment**

The process to adequately identify and address the impacts a proposed project may have on habitat within the floodplain is described in the following sections. In circumstances where an approved habitat assessment (Steps 1 through 4) determines that if no impacts on habitat functions

associated with ESA-listed species will occur, development of a mitigation plan is not necessary. However, most activities within the SFHA that require a HA are highly likely to have impacts on habitats associated with ESA-listed species. The first few steps are to describe the project area, area of potential effects (which may be larger), and whether any listed species potentially occur in that area. If ESA-listed species potentially occur within the area where project effects may occur, then the potential impacts on those species must be determined. When habitat impacts are identified, a mitigation plan must be prepared for the project, in accordance with Steps 5 and 6.

## **2.1 Step 1. Describe the Project Area**

The project area is generally the parcel or parcels being developed. In some cases, the project may extend to a larger area, such as when a road to the parcel is to be built or improved, or when the effects of several interrelated or interdependent proposed land development actions are considered together. Step 1 should produce two documents – the project area description and a project area map.

### **2.1.1 Project Area Description**

If an Oregon State Joint Permit Application (JPA) form has been prepared for the project, it will include the general project area description information that would be included as part of the habitat assessment. An approval under Section 401 of the Clean Water Act is required from the Oregon Department of Environmental Quality (ODEQ) and/or a removal-fill permit is required from the Oregon Department of State Lands (DSL). However, the JPA may not adequately describe all the natural functions, and habitat support processes, species distribution characteristics, hydrologic variables, and/or water quality effects that need to be addressed in a habitat assessment. At a minimum, an Oregon State JPA form would include the following information:

- **Location information:**
  - Street address
  - City and County
  - Township, section, and range
  - Latitude and longitude
  - Tax parcel number(s) of the project location
  - Type of ownership of the project (Federal, State, or locally owned public lands; tribal lands; privately owned lands)
- **Water resource information:**
  - Watershed name  
Watershed Assessment Unit or HUC12 codes. Information on Oregon's Watershed

Assessment Units can be found at the Oregon Department of Environmental Quality (DEQ) [Oregon 2024 Integrated Report Frequently Asked Questions](#) and the mapping webpage at:

[Oregon Explorer](#) HUC codes for the Pacific Northwest region can be found at the U.S. Geological Survey site: [https://water.usgs.gov/GIS/wbd\\_huc8.pdf](https://water.usgs.gov/GIS/wbd_huc8.pdf).

- Names and descriptions of the water bodies in which work will occur, including water type. For more information on water type and a map that designates the types for major water bodies, see the Oregon State Water Resources Department water typing page:  
<http://www.oregon.gov/ODF/Documents/WorkingForests/WaterClassificationTechNotes1.pdf>
- Coastal Management Areas are associated with the coasts of Oregon, as managed by the Oregon Coastal Zone Management Program.
- Critical Areas associated with streams, designated by the local jurisdiction pursuant to the Transportation and Growth Act in Oregon. Critical areas management information should include the critical areas designation and a description of the extent of jurisdiction.
- **Fish and Wildlife Habitat Areas**
  - Designated Goal 5 resources include riparian areas, wetlands, wildlife habitat, and natural areas in or near the project area.

### 2.1.2 Project Area Map

The second item needed for Step 1 is a map, drawn to scale that shows the following:

- Parcel(s) boundaries
- Full analysis area
- Area of the finished project (including roads)
- Any additional area(s) that will be disrupted during construction (including access routes, staging areas, and areas to be re-graded or filled)
- All water bodies
- Site topography, soils, and geology
- Fish and Wildlife Habitat Conservation Areas/Goal 5 resources
- Existing native vegetation by vegetation community zones. For example, a map could distinguish areas with existing coniferous forest cover from areas with shrub cover and areas with grass cover.
- Boundaries of the following regulatory areas (see Section 3 of the Model Ordinance)
  - Special Flood Hazard Area

- Floodway (if available)
- Riparian buffer zone (RBZ)
- Channel Migration Zone (CMZ) (where available)
- Depths of the 10- and 100-year floods at representative locations. These only need to be provided when flood data is available from existing studies for the community.

## 2.2 Step 2. Describe the Project Area's Habitat

In Step 2 of the habitat assessment, the applicant describes the existing habitat conditions of the project area. Tasks 2.2.1 and 2.2.2 of Step 2 are largely based on existing scientific information regarding species use and current habitat functions in the project area.

### 2.2.1 Background Research

In order to adequately describe current population and habitat conditions, Step 2 starts with a review of existing sources of information relevant to threatened or endangered species and their habitats in or near the project area. There may be thorough inventories already available. The following sources should be checked, and appropriate sections referenced as needed:

- Critical areas inventory maps, best available science consistency studies, flood control and floodplain management plans, watershed analyses, and habitat studies that may be available from the community's planning or environmental protection department.
  - The following sources may be helpful: Conservation Strategy Areas; Coastal Zone Management Program
- Natural area studies that may be available from the community's parks and/or natural resources departments.
- NMFS distribution of threatened and endangered Species ([www.nwr.noaa.gov](http://www.nwr.noaa.gov))
- NMFS designated critical habitat maps ([www.nmfs.noaa.gov/pr/species/criticalhabitat.htm](http://www.nmfs.noaa.gov/pr/species/criticalhabitat.htm))
- USFWS Information for Planning and Consultation tool (IPaC) at <https://ecos.fws.gov/ipac/location/index>
- USFWS critical habitat maps (<http://criticalhabitat.fws.gov/> and [www.fws.gov/pacific/bulltrout/](http://www.fws.gov/pacific/bulltrout/))
- USFWS National Wetland Inventory mapper (<https://www.fws.gov/wetlands/data/Mapper.html>)
- USFWS and NMFS habitat recovery plans, when published for ESA listed species in the project vicinity
  - USFWS: ([www.fws.gov/pacific](http://www.fws.gov/pacific))

- NMFS: ([www.nwr.noaa.gov](http://www.nwr.noaa.gov))
- U.S. Department of Agriculture, Natural Resource Conservation Service soil survey maps (<http://websoilsurvey.nrcs.usda.gov/app/>)
- Oregon Department of Fish and Wildlife threatened and endangered species list ([http://www.dfw.state.or.us/wildlife/diversity/species/threatened\\_endangered\\_candidate\\_list.asp](http://www.dfw.state.or.us/wildlife/diversity/species/threatened_endangered_candidate_list.asp))
- Oregon Department of Fish and Wildlife Crucial Habitat Database (<http://dfw.state.or.us/maps/compass/data.asp>)
- Oregon State Department of Environmental Quality Water Quality Assessment (<http://www.oregon.gov/deq/wq/Pages/WQ-Assessment.aspx>)
- Oregon Native Fish Conservation and Recovery Plans
- Stream surveys conducted by tribes or federal, state, or local agencies. Such surveys may contain detailed information on habitat conditions and fish species presence from redd surveys or from snorkeling or electroshocking surveys. Other recent projects near the project area may also have collected stream survey or other habitat data.

### **2.2.2 Protected Species Identification**

The review of the existing research should identify all federally listed species, designated critical habitats, Essential Fish Habitat (EFH) as defined by the Magnuson-Stevens Fishery Conservation and Management Act, affected EFH species, and Fish and Wildlife Habitat Conservation Areas or Conservation Strategy Areas, that occur in or near the project area. Species or habitats that have the potential to be negatively impacted on a direct, indirect, or cumulative basis by proposed ground-disturbing actions need to be described. The appropriate spatial and temporal scales for each form of potential impact must also be identified and briefly explained. Further discussion of potentially measurable or observable impacts, and the appropriate spatial and temporal scales for an effects analysis is presented later in this guidebook.

The table below is an example of how species presence and ESA status of populations and Critical Habitat could be presented. Additional columns could also be inserted to list the status of EFH and other categories when present and convenient to describe in a tabular format.

| Occurrence of Listed Species and Critical Habitat in or Near the Project Area.<br>(Sample Display) |                                     |            |              |                  |
|--|-------------------------------------|------------|--------------|------------------|
| Common Name  | Scientific Name                     | ESA Status | Jurisdiction | Critical Habitat |
| Lower Columbia River<br>Chinook salmon   | <i>Oncorhynchus<br/>tshawytscha</i> | Threatened | NMFS         | Yes              |
| Lower Columbia River<br>coho salmon  | <i>O. kisutch</i>                   | Threatened | NMFS         | Yes              |
| Lower Columbia River<br>steelhead  | <i>O. Mykiss</i>                    | Threatened | NMFS         | Yes              |
| Southern Resident<br>killer whale  | <i>Orcinus<br/>orca</i>             | Endangered | NMFS         | Yes              |

Table 1. Sample Species Status Table for a Habitat Assessment

Check with the NMFS and USFWS data sources described in Section 2.1 of this document to obtain general maps of the distribution of ESA-listed or proposed species, listed critical habitats, and any areas designated Essential Fish Habitat. Please note that the maps of potential fish distribution at these websites are not necessarily the most detailed or accurate maps that exist. The regional or local offices of NMFS, USFWS, tribes, or local land management agencies may be able to provide more accurate maps based on recent fish and habitat surveys, including known migration barriers.

EFH species are managed by NMFS. On the west coast of the United States there are three EFH salmon species that potentially occur in freshwater systems, namely pink, coho, and Chinook salmon. If project actions may potentially negatively impact estuarine and marine systems, numerous species of ground fish and coastal pelagic fishes that are listed under EFH may also need to be considered.

This task should summarize the biological and ecological information that will be needed for the habitat assessment. Appropriate information on species life histories, habitat, and distributions, as well as other data necessary for species survival or possible recovery, must be included to provide sufficient background for the analyses in later sections. It is important to note that even though the 2016 BiOp for Oregon focuses on salmon and EFH species managed by NMFS, all threatened or endangered plant and animal species in or near the project area need to be addressed. If other ESA-listed species are present or are potentially present, it may be necessary to conduct additional surveys and assessments beyond those described in this guidance.

Several sources of existing information are listed above in Section 2.2.1. When a document contains relevant information, that information can simply be cited by page-specific reference. Other sources include the locally developed Best Available Science (BAS) documentation reports; the state’s Growth Management Act that requires each community to prepare such

reports for their critical area standards. Additional references are provided below as examples of the general format and guidance on how some agencies conduct biological assessments.

- The U.S. Army Corps of Engineers' *ESA Consultation Initiation Template* (USACE 2007)  
[\[http://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/ESA\\_Template\\_Guidance.pdf\]](http://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/ESA_Template_Guidance.pdf)
- *Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale* (NMFS 1996).  
[\[http://www.nwr.noaa.gov/Publications/Reference-Documents/upload/matrix\\_1996.pdf\]](http://www.nwr.noaa.gov/Publications/Reference-Documents/upload/matrix_1996.pdf)
- Oregon Department of Transportation *Biological Assessment and Guidance Document* (ODOT 2005).  
[\[http://cms.oregon.gov/ODOT/HWY/GEOENVIRONMENTAL/docs/BAWritingDocument.pdf\]](http://cms.oregon.gov/ODOT/HWY/GEOENVIRONMENTAL/docs/BAWritingDocument.pdf)

Currently, the Northwest Region of NMFS does not formally recommend use of any specific template for Biological Assessments (other than the 'Analytical Process' for some specific land management actions like timber sales on Federal lands). The Region instead allows the potential use of a variety of formats.

HAs must describe existing habitat and species population conditions for each ESA-listed species that may occur in the area of potential effects. The HA should describe the habitat functions that potentially support ESA-listed species in or near the action area. It must then describe the potential impacts of the proposed actions on individuals of each species, populations of those species, and their habitats. The detail and extent of each assessment will vary by the nature and scope of the proposal and the potential for negative impacts.

This section's narrative should include, but not necessarily be limited to, descriptions and discussions of the following topics:

- i. Factors of decline
  - a. Historical pressures on the species
  - b. Current pressures on the species
  - c. Limiting factors for recovery of the species
- ii. Local empirical information (if available)
  - a. Current local population information
  - b. Ongoing monitoring programs (if any)
  - c. Population trend of the species

A summary of the habitat needs for each protected species should follow its description. This section of the narrative should identify and describe the key factors that are important to each

protected species. These factors include the Primary Constituent Elements (PCEs) for those species with designated critical habitat. PCEs are the key habitat components that an ESA-listed species needs to survive in an area (see example in the box). For each listed species, PCEs are described in the corresponding Federal Register publication for its designated critical habitat. The PCEs must be described when critical habitat may potentially be affected. In those cases where designated critical habitat is not present near the project action area, describing the available habitat in terms of the PCE components is still a recommended means to concisely describe existing habitat features. Not all PCEs for a species may apply to a project. In the example below, PCEs related to the ocean environment would not apply to the project if the project area is on a freshwater stream.

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### **Example Primary Constituent Elements**

(Chinook salmon and steelhead trout, 50 CFR Part 226, Federal Register / Vol. 70, No. 170 / Friday, September 2, 2005)

1. Freshwater spawning sites with water quantity and quality conditions and substrate supporting spawning, incubation and larval development.
2. Freshwater rearing sites with water quantity and floodplain connectivity
3. Freshwater migration corridors free of obstruction
4. Estuarine areas free of obstruction
5. Nearshore marine areas free of obstruction
6. Offshore marine areas with water quality conditions and forage, including aquatic invertebrates and fishes, supporting growth and maturation.

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### **2.2.3 Site Investigation**

Tasks 2.2.1 and 2.2.2 give the applicant guidance on where to look and what to look for regarding species potentially present at the site. Following completion of the first parts of Step 2, a site visit is usually needed to determine if there are habitat areas in the project area with which identified species have a “primary association.” “Habitats of primary association” include critical habitat components (which could be PCEs), which, if altered, may reduce the likelihood that the listed species will be able to continue to live and reproduce in the area over the long term. A site visit and determination of site-specific conditions is generally necessary to determine what actual impacts on ESA-listed species, EFH, and associated habitats may occur from a proposed project.

For example, identification of Chinook salmon habitat areas of primary association should look for those PCEs listed in the box. A description of the riparian and instream habitat conditions that exist both upstream and downstream of the project action area would also be needed.

This description of existing baseline habitat functions must, at a minimum, include those habitat functions that are listed in the BiOp on the NFIP in Oregon. These functions are described in the next section on the habitat narrative. In addition, it is especially important to note the locations

and distances from the proposed project area relative to any stream reaches that may potentially support ESA-listed species or contain designated critical habitat.

The description of habitat and general conditions in the project area should also identify existing modifications to the project site within the floodplain, including existing structures, roads, impervious areas, and graded or filled areas. Any existing modification that has impaired habitat functions and/or habitats of primary association should be described (as discussed in the next section). If the project includes activities to restore the habitat in these modified areas, it could help the assessment conclude that there will be no adverse effects on habitat due to the project (see also Task 2.3.3 of Step 3).

The Oregon Department of Fish and Wildlife, through its conservation strategy includes additional actions that have the potential to result in impaired habitats. The site investigation should look for and describe these modifications when they are present. In general, actions that have the potential to result in impaired habitats involve one or more of the following:

- coastal development and associated construction
- shoreline armoring
- alteration of hydraulic regimes
- dredging and dredged materials disposal
- aquaculture
- global climate change
- habitat isolation
- the removal of riparian vegetation (except for the removal of noxious plants)

Furthermore, RPA element 2 identified in the Oregon BiOp requires communities within the implementation plan area to identify a riparian buffer zone (RBZ) that is measured 170 feet horizontally from the ordinary high-water mark of perennial or intermittent streams, including the area between these outer boundaries on each side of the stream, including the stream channel or 170 feet inland from a MHHW. Development in the RBZ must adhere to additional performance standards to comply with NFIP-ESA integration efforts as outlined in section 2.5.3.

#### **2.2.4 Habitat Narrative**

The findings of the field investigation are used to prepare a description of the habitat areas of primary association that will need to be protected. The narrative for this part of the assessment report needs to describe the presence and existing quality of the natural features that relate to the PCEs for all the species and habitat areas that were identified in Tasks 2.2.2 and 2.2.3. The habitat narrative must include descriptions of the site's floodplain storage capabilities, water quality, and riparian vegetation. As described in the final paragraph of Task 2.2.2, PCEs are the key habitat components required for an ESA-listed species, as identified in the final rules that were published in the Federal Register when a species was listed. The narrative must identify what habitat

functions are still relatively intact and which are impaired by previous site and/or area (e.g., sub-watershed, watershed, or basin scale) modifications.

The BiOp for the NFIP in Oregon states that within the SFHA all development impacts on natural floodplain functions must be mitigated. The mitigation standards should identify the specific development activities that require mitigation including the following activities.

- 1) The addition of fill, structures, levees, or dikes, which reduces flood storage and fish refugia, impedes habitat forming processes, and increases flow volume and velocity. The latter erodes stream banks and beds and alters peak flow timing, which increases the risk of injury to redds, fry, and alevin.
- 2) The addition of impervious surfaces, which reduces hyporheic function and stream recharge, increases stormwater runoff, pollutant loading, water temperature, velocity, and scour, and modifies peak and base flows.
- 3) Vegetation removal, which reduces shade, detrital input, velocity refuge, and habitat complexity, and increases stormwater runoff and erosion.
- 4) Bank armoring, which reduces instream habitat values and impedes habitat forming processes.

The site investigation and resulting habitat narrative must also include a description of the proposed action and existing habitat conditions even when the action is outside of the High Hazard Area.

It is possible that there may be limited information available from the sources identified in Tasks 2.2.2 and 2.2.3. The habitat narrative must note the sources of data and information, and clarify which statements are based on scientific reports and data, and which statements are based on the professional opinion of the author. This is one of the most vital aspects of the assessment, and is required for reviewers to evaluate the basis and relative confidence of statements, related to current conditions and estimated environmental effects.

The variables listed below should be considered to ensure that the assessment covers all the required factors. In most cases, the analysis scale will be small and only address a small contiguous action area. However, some projects may include multiple sites in multiple watersheds. The extent and detail needed for the assessment will vary by the nature, scope, and scale of the proposed action. In many cases, the project will not have the potential to affect many (or any) of the habitat functions listed below. When that is the case, the assessment simply needs to clarify why the project does not have any significant potential to degrade some or all variables. The list below is intended to assist jurisdictions in considering all possible impacts on aquatic habitat and ESA-listed fish species, due to major land management actions. The list includes questions that should be answered in the HA with additional guidance on how to address them.

## Primary Constituent Elements (PCEs)

These are identified in the final rules that designate critical habitat for listed threatened and endangered species (see the NMFS and USFWS critical habitat map links within the References and Resources section to access final rules for ESA listed species). For example, for an inland site with Chinook salmon habitat (see box on page 18), the first three sections of the habitat narrative would cover freshwater spawning sites, freshwater rearing sites, and freshwater migration corridors. In those cases where designated critical habitat is not present near the project action area, describing available habitat in terms of the PCE variables is still recommended to concisely depict key habitat features. Even if designated critical habitat is not present on a site, there still may be suitable habitat for the species and the species may be present. If suitable habitat is present, then the potential for impacts to the species from project activities needs to be evaluated. The distance and locations of the nearest designated critical habitat, relative to the project area also need to be listed, so that the potential for projects to impact these mapped areas can be evaluated (e.g. via sediment transport). Water quality, floodplain connectivity and storage, and riparian vegetative community are three PCEs of particular importance within the Oregon implementation plan area, as they have been identified as key floodplain functions by the 2016 BiOp.

## Water Quality

- Does the proposed action include any activities (e.g. grading, stormwater, or road construction) that may have any potential to cause measurable degradation to water quality variables within the action area, and how was this assessed?
- If so, which water quality variables would be affected? Water quality variables that should be considered include: turbidity, pH, total dissolved gas (percent of saturation), bacteria, toxics, and pollutants. In Oregon, the numeric standards for turbidity, pH, total dissolved gas, and bacteria vary by location depending on the state's designated uses for salmon and charr fish species listed for the river reach in question (i.e., spawning, rearing, and/or migration). These states have also adopted narrative criteria to supplement the numeric criteria for some variables. The narrative criteria are statements that describe the desired water quality goal, such as waters being "free from" pollutants including oil and scum, color and odor, and other substances that can harm people and fish.
- Is there any potential for the project to result in not meeting state water quality standards for any water quality variables (over any temporal scale) within the defined action area? If so, which variables? How was the action area selected, and how was the assessment conducted?

Reaches of streams that are known to be impaired and to not meet water quality criteria for one or more variables are required to be listed under section 303(d) of the Clean Water Act (CWA). If a river reach is not included on one of these lists, it does

not necessarily ensure that it meets all water quality standards for all variables. It may simply mean that no sampling (if any has occurred) has demonstrated that it does not meet standards. Data on water quality variables may be extremely limited or non-existent for many streams and river reaches. Water body segments only become listed via documented and repeated violations that are estimated to have likely been human-caused.

Jurisdictions in Oregon should advise the Oregon Department of Environmental Quality regarding any water quality data that they are aware of, in addition to what is cited in the current 303(d) list for a specific river reach. Information on the 303(d) list is found at: [Department of Environmental Quality : EPA Approved Integrated Report : Water Quality : State of Oregon](#).

Water body segments (i.e., stream reaches, lakes, marine waters) that appear on the 303(d) list require the preparation of a plan to restore water quality, which often takes the form of a Total Maximum Daily Load (TMDL) study. Habitat assessments should include consideration of the status of water quality in the project action area and evaluate whether the project proposal has any potential to further degrade any variables, including any that are already listed as not meeting State standards.

- If there is any potential for degradation of any water quality variables, what are the estimated effects on ESA-listed fish species and/or their designated critical habitats within the action area, and how was this assessed? In addition, what is the maximum estimated spatial scale, and maximum time period when any possible impacts on ESA-listed fish species and/or their designated critical habitats might occur?

### **Water Temperature and Dissolved Oxygen**

- Does the proposed action include any actions or regulations that may cause measurable changes in water temperature or changes in levels of dissolved oxygen (DO) in any locations, and how was this assessed?
- If there is any potential for measurable impacts, is there any potential for water temperature or DO (over any temporal scale) to not meet State water quality standards within the action area(s)? [see Water Quality section above for hyperlinks to standards in Washington and Oregon].
- If there is any potential for measurable impacts, what is the estimated effect (at all temporal scales) on ESA-listed fish species, and how was this assessed?
- If there is the potential for measurable impacts, what is the maximum estimated spatial scale and locations (including any downstream effects) and maximum time period when impacts on ESA-listed fish species may occur?

### **Low Flow Hydrologic Regimes (including hyporheic flows)**

- Does the proposed action include any actions that could potentially cause changes to the magnitude, duration, or recurrence intervals of low summer baseflows at any locations, over any temporal scale, and how was this assessed?
- If there is any potential for changes, what impact would those changes have on ESA-listed fish species or their designated critical habitats in the project action area, and what is the maximum estimated spatial and temporal scale of those effects?

### **High Flow (flood) Hydrologic Regimes**

- Does the proposed action include any actions that could potentially cause changes to the magnitude, duration, or recurrence intervals of the 10-, 50-, or 100-year flood flows in any location, and how was this assessed?
- If there is any potential for changes in flood flows, what effect would those changes have on ESA-listed fish species and/or their designated critical habitats in the project action area, and what is the maximum estimated spatial and temporal scale of those effects?

Site flood dynamics and hydrology must be assessed to varying degrees, to ensure that the analysis is adequate and appropriate, for the nature of the proposed action and the habitat resources potentially at risk. Flood flow depths, volumes, velocities, and flow paths have an important effect on the way habitat is formed. The habitat assessment narrative should describe these factors with an emphasis placed on the effects of flood events on habitats. Tributary streams, seeps, stormwater outfalls, waterways that pass through the project site, and other water sources should be identified and described. This discussion may rely on and reference other flood and site hydrology studies prepared for the project and should be focused on how flood dynamics and hydrology impact local habitat areas.

A semi-quantitative or qualitative assessment of water quantity should usually be sufficient for projects limited in scope, scale, and overall potential to result in negative impacts on ESA-listed fish populations and their critical habitats. Projects with more potential for measurable or observable negative impacts will sometimes require more rigorous examination of hydrologic or sediment regimes, based on best available data, including correlations to existing gage stations. They may also require more intensive field surveys and possibly 1- or 2- dimensional flow modeling to describe water velocities, likely extents of inundation, and possible changes to instream and riparian habitat due to future flood events.

### **Flood Velocities**

- Does the proposed action include any actions that could potentially cause increases in water velocities in streams or rivers during high flow events, and how was this assessed?

- If there are any potential for increases in high flow velocities, is there also any potential for measurable increases in streambed or stream bank shear or velocities in fish habitat units (e.g., pools, glides, side-channels) that provide refugia for ESA-listed species from high velocities within the channel over any temporal scale at any locations? How was this estimated?
- If there is any potential for changes in flood velocities, what impact would those changes have upon ESA-listed fish species and/or their designated critical habitats in the project action area, and what is the maximum estimated spatial and temporal scale of effects?

### **Sediment Delivery (erosion) and Sediment Regime (in-stream transport)**

- Does the proposed action include any actions that could potentially increase rates of surface erosion, delivery of sediments to water bodies, or total loading (volumes) of sediment transported in rivers that provide habitat for ESA-listed species? How was this assessed?
- If there is any potential for sediment increases, what impact would those changes have on ESA-listed fish species and/or their designated critical habitats in the project action area, and what is the maximum estimated spatial and temporal scale of those effects?

### **Stream Substrate**

The quality, quantity, and general distribution of substrate particle size needs to be described in those cases where there is the potential for spawning, rearing, feeding, or refugia substrate habitat to be degraded by project actions. In some cases, this may include impacts from transport of sediments downstream from the project site.

If the proposed action has the potential to deliver significant quantities of fine-sediments to stream reaches in designated critical habitat or in those areas that may otherwise provide potential habitat to ESA-listed species, the percent fines (e.g. per %) would need to be estimated and the analysis methods described. This information is required to describe current habitat conditions and estimate how (if) any additional inputs of fine sediments may degrade the current quality of stream substrate habitat.

In those cases where sediment impacts may be a significant concern, it may also be necessary to fully describe current substrate conditions in those stream reaches that could be impacted. If this is the case, the description should include the general range of substrate types that currently exist across each different channel type in potentially affected stream reaches.

The specific questions that need to be addressed are:

- Does the proposed action include any actions that could potentially cause increased rates of aggradation of fine or coarse sediments on potential substrates

for spawning, feeding, rearing, or migration? How was this assessed?

- If there is any potential for increased sedimentation, what impact would those changes have on ESA-listed fish species and/or their designated critical habitats in the project action area, and what is the maximum estimated spatial and temporal scale of effects?

### **Floodplain Connectivity and Storage**

Disconnecting a river from its floodplain impacts several other functions that directly affect the quality and quantity of habitat that supports ESA-listed species. Disconnection affects the potential for natural lateral migration and hydrologic connectivity between the stream and its floodplain. It also affects groundwater systems and the production and utilization of organic matter by riparian and aquatic communities.

Hydrologic connections provide temporary storage of floodwaters, while also providing key off-channel habitats and a source of water during dry summer base-flow periods. Many urbanized watersheds have lost these functions to varying degrees. If the stream is largely disconnected from its floodplain, the stream ecosystem cannot maintain its biological diversity, nor can it recover from major episodic disturbances. Some of these diverse habitat types also provide refuge from high velocity flows during flood events (see discussion below).

The habitat assessment needs to describe the current condition of floodplain connections and processes. This can usually be accomplished in a brief narrative via a combination of a site visit and examination of aerial photography and FIRM maps (if they exist). Some of the conditions that should be noted include, but are not necessarily limited to, the extent of the channel migration zone, general channel geometry in potentially affected stream reaches, including the distribution and size of riffles and pools, and identification of any side-channels and tributaries. Specific questions that need to be addressed include:

- Does the proposed action include any actions that could potentially affect the extent and level of the connection of stream channels to their floodplain? How was this assessed?
- If there is any potential for changing the extent or level of floodplain connectivity, what impact would those changes have upon ESA-listed fish species and/or their designated critical habitats in the project action area, and what is the maximum estimated spatial and temporal scale of effects?

### **Refugia for ESA-listed Fish Species from High Velocity Flows**

- Does the proposed action include any actions that could potentially affect the location, extent, or quality of refugia from high velocity flows available for ESA-listed fish

species in side channels and other areas across the floodplain when over-bank flows occur? How was this assessed?

- If there is any potential for changes in the extent or quality of refugia, what impact would those changes have upon ESA-listed fish species and/or their designated critical habitats in the project action area, and what is the maximum estimated spatial and temporal scale of those effects?

### **Riparian Vegetative Community**

The riparian vegetation along a stream provides many functions including bank stability, food input to streams, nutrient cycling, potential for recruitment of large woody debris to streams, shade, buffering of sediment and pollutants. The habitat assessment should include, but not necessarily be limited to, a description of existing conditions throughout any mapped channel migration area. Freshwater riparian conditions should be characterized by describing conditions as they relate to the riparian habitat functions. The habitat functions affected by riparian communities include water temperature control, recruitment of large woody debris, filtering of sediment and pollutants, erosion control, bank stability, and influence on microclimatology.

Characterization of marine shoreline conditions should be consistent with guidance from state agencies, such as the Oregon's Department of Land Conservation and Development (DLC) Coastal Management Program. Questions that should be addressed include:

- Does the proposed action include any actions that could potentially degrade the quantity or quality of the riparian vegetative community? How was this assessed?
- If the project has any potential to affect riparian vegetation, describe the general species, sizes, areas, and percent cover of the existing levels of riparian vegetation as well as the percent cover resulting from the proposed action.
- If there is any potential for degradation of the riparian vegetative community, how would:
  - The extent, rate, and quality of nutrient cycling, buffering, food input from terrestrial sources to streams (i.e. allochthonous food), and recruitment of large woody debris be impacted?
  - The extent and quality of bank stability and stream shading to be impacted?
- If there is any potential for degradation of some of the functions that the riparian community provides, what impact would those changes have on ESA-listed fish species and/or their designated critical habitat in the project action area, and what

is the maximum estimated spatial and temporal scale of those effects?

### **2.2.5. Habitat Area Map**

Once all habitat areas of primary association are identified and described, they should be delineated on a map. The map should be at the same scale as the project area map (Task 2.1.2) to facilitate comparison of the habitat to be protected with the extent of the Special Flood Hazard Area, Floodway, the riparian buffer zone, and other relevant features such as watercourses and wetlands.

## **2.3 Step 3. Describe the Project**

There are two key parts of the project that need to be described at this stage of the assessment report: 1) the final project, i.e., what the area will look like and how it will be used when the project is completed; and 2) the construction process that will be followed to get there. The description of the final project should be covered first. Measures taken by the proponent to avoid, minimize, replace, or compensate (the descending order of preference of the mitigation sequence) for degradation to the habitat functions must be described in enough detail to allow assessment of all the effects of the proposed action. It needs to be clear whether each measure is required, or if it is only recommended. It can't be assumed that recommended actions will occur, so their potential positive impacts should not be part of the assured result.

As described for Task 2.1.1, if an Oregon State JPA form has been prepared for the project, it will include general project description information, but usually additional information will be needed for the habitat assessment. More information regarding the Oregon application process and JPA form template can be found at the Oregon Department of State Lands website at: <http://www.oregon.gov/DSL/WW/Pages/Permits.aspx>.

If the information that is already being provided in the JPA includes the level of detail described in this guidance, then the community may accept the application form as sufficient for the project description. If a JPA has not been prepared for the project, the project area description should, at a minimum, include the information included in Tasks 2.3.1 and 2.3.2 of this section.

### **2.3.1 Final Project**

All features of the proposed completed project must be described. This includes, but is not necessarily limited to:

- A summary of the project, including all features that will be present when construction is finished
- Project category (industrial, commercial, residential, institutional, transportation, recreational, maintenance, agriculture, or environmental restoration)
- A description of the general design, location relative to nearest water bodies, and general dimensions of the footprints of any structures and facilities including, but not

- necessarily limited to: buildings, boat launches, docks, pilings, fences, roads, bridges, culverts, trails, roads, or paved areas
- Detailed descriptions of all structures or facilities that would potentially impact water bodies or wetlands including, but not necessarily limited to: aquaculture, buoys, mining, bank stabilization, channel modifications, culverts, dams, levees, ditches, fishways, moorage, or outfall structures
  - Above and underground utilities
  - Water supply
  - Wastewater disposal
  - Stormwater management facilities
  - Non-native landscaping

The level of detail needed for these descriptions will vary according to the nature, scope, and scale of the project, and its location relative to ESA-listed species and their potential habitats. Assessments should include as much information as is needed to adequately describe and estimate potential environmental effects. In some cases, there may be little or no potential for adverse effects; therefore, in those cases, it may require relatively less information and discussion to document potential effects.

Project details, nearby stream courses, and any key floodplain features need to be mapped, and those features should be shown on the project area map(s) (Task 2.1.2). Maps should show how project details relate to stream conditions appearing on the habitat area map(s) (Task 2.2.5).

There should also be a description of:

- Any ongoing activities that will be conducted at the site after construction is complete.
- Any ongoing activities that will affect adjacent areas, including, but not necessarily limited to, increases in traffic, stormwater runoff from the site, and noise, and changes air quality.

### **2.3.2 Construction Process**

At a minimum, the description of the construction methods should cover the following points:

- Land clearance (areas to be cleared and native vegetation that will be removed)
- Any work in-water, including a description of the methods and materials used
- Grading and filling
- Stormwater management measures to be taken during construction
- Utility installation (including any on-site wastewater treatment)
- Methods and techniques for construction of structures, including buildings, roads,

bridges, paved areas, retaining walls, shoreline modifications, and types of equipment to be used

- Construction phasing and anticipated construction timing
- Mobilization and staging plans
- Temporary construction access and staging areas

Maps and a timeline should be included to show where and when each activity will occur.

### **2.3.3 Protection Measures**

There are several federal, state, and local regulatory requirements that require development projects to include measures that avoid, minimize, replace, or compensate for negative effects on populations or habitat functions due to project impacts. The applicant may propose additional measures. The habitat assessment must list the protective measures that will be implemented and clarify which are required and which are recommended. All required and recommended measures should be described. They could include, but are not necessarily limited to, the examples below:

- Preserving a setback area from any disturbances, or any other measures that avoid negative impacts on ESA-listed species or their habitats.
- Drainage/erosion control plans to be implemented during construction.
- Post-construction stormwater and erosion control plans.
- Use of low impact development techniques (which may eliminate or reduce runoff from areas to be developed).
- Any other measures that minimize negative impacts on ESA-listed species or their habitats.
- Actions to implement wetland mitigation plans.
- Any other measures proposed to reduce potential negative impacts during or after construction is complete, such as sedimentation basins, should be included and described as part of the project design and included in the project timeline.
- Compensatory storage provisions to replace lost floodplain storage<sup>1</sup> that demonstrate that they will not potentially strand fish.
- Any other forms of on-site or off-site compensation for degradation of habitat functions that support ESA-listed species.
- A description of any adaptive management program that will be utilized. This should

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<sup>1</sup> Compensatory floodplain storage requirements are included in Section 7.6 of the Model Ordinance. This section requires that compensatory storage areas must be graded and vegetated to allow fish passage during flood events without creating fish stranding sites. Areas of compensatory flood storage should be designed to create floodplain habitat whenever feasible. Compensatory storage should not be used in areas prone to avulsions because lowering floodplain elevations or digging pits in these areas may increase the probability of an avulsion.

include, but not necessarily be limited to, a description of what monitoring would be conducted to track both implementation and effectiveness of mitigation measures, what would trigger adaptive measures, what those measures would be, and what method will be used to determine if they are sufficient and successful.

Adaptive management refers to a structured, iterative process intended to enable decision-making under conditions that include some uncertainty. The goal is to reduce that uncertainty over time by monitoring project site conditions before, during, and after construction, as well as the effectiveness of project design elements and mitigation measures. Possible components of an adaptive management plan include, but are not necessarily limited to, the following topics.

- How monitoring and resultant possible changes in project management (e.g., variations in mitigation measures) are based on spatial and temporal scales of analysis that are appropriate for the project in question, and how the basis for those scales is explained. This includes the location(s), duration, and frequency of monitoring.
- Why the variables selected for monitoring are appropriate and practical to track project impacts and the effectiveness of best management practices and mitigation measures.
- How monitoring results can and will be used in a direct way to decide what, if any, changes need to be made to achieve the desired future condition for the project. For many projects the desired future condition is obvious and can be easily stated. For more complex projects, the minimum parameters needed to adequately define the desired future condition will need to be determined and clearly described.
- How adaptive changes to the project would be based on existing best management practices and best available science to the greatest extent possible.

## **2.4 Step 4. Assess the Environmental Effects**

The habitat assessment must analyze the direct and indirect effects of the proposed action on ESA-listed species and their aquatic, riparian, and floodplain habitat areas identified in Step 2, as well as the cumulative effects of future actions that are reasonably certain to occur. Primary factors to be considered in the assessment include, but are not necessarily limited to, the following considerations:

- The proximity of the action to individuals of the species present, habitat management units, or designated critical habitat units. This includes assessing the likelihood of measurable or observable impacts on fish or their designated critical habitats based on the relative location(s) of the action and nearby populations and habitats. For example, habitats located well downstream of an action that is expected to deliver significant volumes of sediment to a stream near the project site may still be measurably impacted

if those sediments may be routed (transported) downstream to areas of concern. The appropriate temporal and spatial scales of analysis will vary by the variables of concern and nature of the project and must be described in the assessment.

- The spatial distribution of an action over one or more action areas or sub-watersheds. The analysis should consider the accumulated effects of impacts in multiple locations and/or cumulative effects due to the combination of project effects added to the effects of other nearby, reasonably foreseeable future, non-federal actions.
- The timing of the proposed action relative to sensitive periods of the lifecycles of any potentially impacted ESA-listed species, and how that timing may result in negative impacts.
- The nature, scale, scope, and duration of the effects of the proposed action on the sub-population size, growth and survival, life cycle, diversity, isolation, and genetic integrity of ESA-listed species that could potentially be affected. Assessments should include as much information as is needed to adequately describe these population variables. In some cases, there may be little or no potential for adverse effects with respect to these variables, so relatively little discussion will be needed.
- The nature, scale, scope, and duration of the effects of the proposed action on the PCEs of any designated critical habitat, including any direct, indirect, interdependent, interrelated, or cumulative effects. In freshwater systems, PCEs generally include adequate water quality, water quantity, and substrate (free of fine sediments) for spawning, incubation, and larval development, floodplain connectivity for rearing, and stream channels free of man-made obstructions (obstructions may include physical, water temperature, or chemical barriers). The habitat assessments should include as much information as is needed to adequately estimate potential effects on these habitat variables. In some cases, there may be little or no potential for adverse effects on these variables, so relatively little discussion will be needed.
- There are three potential categories of effect on designated critical habitat that relate to the duration of the effect: 1) a short-term events where effects reduce to negligible levels soon after construction activities cease; 2) actions that may result in sustained long-term negative effects that are measurable or observable after the proposed action is completed; and 3) actions that cause permanent changes, resulting in a new threshold (condition) for some population or habitat functions of an a ESA-listed species and/or its critical habitat. Note that ‘Short-term’ effects will never persist more than one year beyond the duration of construction duration (e.g., removal of native vegetation due to construction that is replaced within one year), and in the case of significant inputs of sediment or pollutants, may not persist for more than a few hours to a few days at most.
- The frequency of any negative impacts due to the proposed action, described as the mean number of events per an appropriate time basis for the proposed action. This rate must then be compared against best available data on the estimated recovery rates of

any potentially affected species to assess how those species would likely be impacted by multiple disturbances (if such occurs). The duration of each event may vary. A recurring event of short duration will in some cases result in a smaller net impact than a single event of a much longer duration, but the opposite may also be true depending on the nature of the disturbance.

- The severity of any negative effects on ESA-listed fish or their designated critical habitats that may potentially occur due to the actions of the proposed project. In this context severity is not analogous to intensity or scale, but it is closely related. With a “severe disturbance,” affected fish would take a longer time to recover, due to both the intensity of effects as well as the cumulative effects of the other variables described above.

### 2.4.1 Types of Environmental Effects

The References and Resources section at the end of this document lists resources that have additional guidance for the assessment of environmental effects. The habitat assessment should assess direct, indirect, and cumulative effects.

**Direct effects:** According to ESA rules and regulations, direct effects occur at or very close to the time of the action itself. Examples include, but are not limited to: construction noise disturbance, loss of habitat, or sedimentation that results from the construction activity. Direct effects include the effects of interrelated actions. Such actions are part of the proposed action and depend on the proposed action for their justification. Direct effects also include interdependent actions, which are activities that have no independent utility apart from the action under consideration. Neither interdependent nor interrelated actions would occur ‘but for’ the implementation of the proposed action.

The discussion of direct effects must include information on the temporal and spatial limits of the effects, species tolerances, severity of effect, mortality, and other forms of take (including harm) and expected habitat loss as a result of the proposed action. Identification of the appropriate estimated temporal and spatial scales of potential impacts are key to assessing environmental consequences. It is recommended that a table or list of appropriate scales for each pertinent issue (e.g., possible erosion and delivery of sediments to stream channels, water pollutants, changes in instream or riparian habitat, changes in hydraulics, etc.) be created to document appropriate scales of analysis for the nature and location of the proposed action. Habitat assessments only need to address those habitat functions and processes that the project has the potential to affect, while also explaining (as briefly as is practicable) why those are the only functions that may be impacted.

The direct impacts a project might have on a habitat area include, but are not limited to:

- Permanent clearing and grading of any habitat area
- Temporary clearing and grading of any habitat area during construction
- Permanent structures, pavements, etc., constructed within or placed within a habitat

area

- Modification of a stream channel or side channel, including bank stabilization measures and removal or changes to large woody debris (other than stream restoration efforts)
- Diversion of water that will change the hydrologic or sediment regime in the project action area

**Indirect effects:** Indirect effects are also caused by or result from the proposed action; however, they are likely to occur later in time. They may occur outside of the area directly affected by the action. Indirect impacts include, but are not limited to:

- Disrupting high or low stream flows, including impacts from stormwater runoff
- Contributing to sedimentation that fills in substrate
- Blocking a corridor that connects habitat areas
- Increases in water temperature or degradation of chemical or biologic water quality parameters through removal of riparian vegetation or other actions
- Disturbance of riparian vegetation (for example, clearing vegetation to the edge of a forested riparian area)
- Moving or removing large woody debris
- Destabilizing banks or altering natural lateral or vertical channel migration or channel forming processes
- Degrading wetland areas through disturbance of adjacent vegetation or modification of hydrology

**Cumulative effects:** Under the National Environmental Policy Act (NEPA) cumulative effects include the lingering effects of past and current actions (as depicted in the environmental baseline) that overlap in time and space with the proposed action, as well as estimates of the effects of future state, federal, tribal, local, or private actions that are reasonably certain to occur in the action area. However, under the ESA's distinct definition, cumulative effects include the effects of foreseeable future state, tribal, local, or private actions that are reasonably certain to occur in the project action area, but federal actions (i.e. actions permitted or partially funded by one or more federal agencies) are not part of the assessment nor are any past projects.

Project assessment cannot be segmented under either NEPA or ESA. It is not permitted to break the project down into small segments that may have low levels of impacts when considered separately. The entire scope of the direct, indirect, interdependent, and interrelated actions must be considered, including any possible lingering effects that may overlap with other reasonably foreseeable projects that could result in cumulative effects in the area(s) defined for analysis.

Permit officials are required to review the cumulative effects of all projects when the proposed action has the potential to produce any measurable or observable negative effects. The cumulative effects section should not simply be a list of other projects. It must in some manner describe the estimated accumulated impacts of future projects that are reasonably certain to occur, superimposed upon the baseline of current conditions and the expected impacts of the proposed action.

#### **2.4.2 Report Format**

There is no single required format for a NFIP habitat assessment, but such assessments must contain sufficient information and analysis to fully describe the impacts of the proposed action on ESA-listed species and their habitats. Similarly, neither NMFS nor USFWS (often jointly referred to as the ‘Services’) requires a specific format that biological assessments must follow. The main reference that the Services refer to and recommend applicants fully comply with is the Consultation Handbook (NMFS, USFWS 1998). [Endangered Species Consultation Handbook \(noaa.gov\)](https://www.noaa.gov)

The Handbook is a large document that includes chapters and appendices that stress the contents (versus format) needed in a biological assessment, along with examples of such assessments. However, there are also several examples of formats sometimes employed by various agencies that may be helpful for jurisdictions to reference as they can supplement the recommendations in this guidance. One format often used in the Pacific Northwest is the [Matrix of Pathways and Indicators \(NMFS 1996 and USFWS 1998\)](#). This approach assesses both the current condition and the estimated effect of the proposed action on 18 ‘indicators’ of population and habitat conditions that fall under six broader ‘pathway’ categories. This approach is useful because it breaks down the assessment into a repeatable, manageable number of specific topics.

The only significant difference between the NMFS and USFWS versions is that the suggested thresholds for when the current condition of an indicator is ‘properly functioning’, ‘at risk’, or ‘not properly functioning’ varies between the Services. The narrative for the matrices emphasizes that these specific threshold metrics do not need to be used and can be replaced by other metrics that are more appropriate for the watershed in question, if the deviation can be explained.

The outline below is a variation on the U.S. Army Corps of Engineers (USACE) Biological Assessment Template guidance regarding how to describe the effects of a proposed action in a biological assessment. It is included in the Endangered Species Section of USACE Permit Guidebook online resource at: <http://www.nws.usace.army.mil/Missions/CivilWorks/Regulatory/PermitGuidebook.aspx>. All the components of this USACE outline must be covered in some manner, but the format may vary.

##### A. Direct effects

1. First PCE (e.g., freshwater spawning sites)
2. Second PCE (e.g., freshwater rearing sites)

3. Third PCE (e.g., freshwater migration corridors)
  4. Additional PCEs as appropriate
  5. Essential Fish Habitat designated by the National Marine Fisheries Service
  6. Fish and Wildlife Habitat Conservation Areas
  7. Vegetation communities and habitat structures
  8. Water quality
  9. Water quantity, including flood and low flow depths, volumes, and velocities
  10. The channel's planform pattern and migration processes
  11. Spawning substrate, if applicable
  12. Floodplain refugia, if applicable
- B. Indirect effects - see the list on the previous pages of this document and include consideration of indirect effects with respect to items A.1 through A.12, above, that are applicable to the proposed project
- C. Effects from interdependent and interrelated actions
- D. Cumulative Effects
- E. Effects determinations – see following section
- F. Summary

### **2.4.3 No Net Loss Determination**

Actions in the SFHA of the implementation plan area will have a May Affect -- Not Likely to Adversely Affect (NLAA) determination. However, the RPAs set forth in the 2016 BiOp and 2017 errata allow for compensatory mitigation of adverse effects within the SFHA through abundance with no net loss standards. No net loss is a standard where adverse impacts must be avoided or offset through mitigation so that there is no net change in function from the condition when development begins. The no net loss standards ensure that the implementation of the NFIP avoids jeopardy of listed species and adverse modification of habitat, including essential fish habitat (EFH) under the jurisdiction of NMFS within the plan area. They apply to three floodplain functions (i.e., floodplain storage, water quality, and riparian vegetation) essential to the survival of the 16 ESA-listed fish species and Southern Resident killer whale in the plan area.

### **2.4.4 Preparing the Mitigation Plan**

The following sections (Steps 5 and 6) provide guidance on preparing a mitigation plan, including reference to any other pertinent habitat-specific restoration and mitigation guidance materials developed for the area under consideration. The final objective of floodplain habitat mitigation is to ensure that there is no adverse effect on quality or quantity of natural habitat functions and processes within the Special Flood Hazard Area through no net loss standards. Step 6, Task 2.6.1

of this guidance provides guidance on mitigation objectives to achieve no net loss, including specific requirements for mitigation within riparian buffer zones and through the remainder of the SFHA.

For many development proposals, the permit conditions and mitigation actions required to meet other local and state permit requirements may also provide sufficient mitigation for the impacts identified through Step 4 of this guidance. In such instances, permit conditions and required mitigation actions may overlap to serve as mitigation for impacts on floodplain habitats, as required by the local floodplain management ordinance. However, the conditions and mitigation proposed, must be sufficient to mitigate for all floodplain habitat impacts, in order to meet the objective of no adverse effect on habitat for ESA-listed species.

## **2.5 Step 5. Review Mitigation Alternatives (Mitigation Sequencing)**

There are three major types of mitigation approaches to rectify an adverse effect. In descending order of preference and effectiveness they are: avoidance, minimization, and mitigation. This mitigation sequence hierarchy requires minimization of those impacts that can't be avoided and directs that any impacts remaining after taking steps to minimize shall be fully mitigated. On-site, in-kind compensation is preferred over off-site and/or out-of-kind compensation. The necessity for use of the latter must be explained and justified. Successful mitigation is dependent upon adequate monitoring of both the actual (versus planned) implementation of mitigation measures as well as the effectiveness of those measures to accomplish the stated objectives in the Mitigation Plan (see Step 6 below). The results of that monitoring may trigger adaptive management to accomplish those goals.

### **2.5.1 Avoidance**

Avoidance of adverse effects is the preferred approach. FEMA recommends that new land development actions remain outside of the SFHA. Avoidance prevents additional adverse effects on aquatic and riparian habitats, while also precluding any risks to public safety and property from increased frequency, duration, or magnitude of flooding that would possibly result from further development in the floodplain. Avoidance also largely eliminates the expense of adhering to no net loss within the SFHA. The permit applicant should strongly consider relocating or redesigning proposed projects to minimize the impacts on floodplain habitat functions and the corresponding need for a mitigation plan.

Communities should consider disincentivizing development within the floodplain. Many communities currently use a variety of strategies to encourage conservation of sensitive areas by allowing for development at a more intense level in other areas. These measures are usually implemented through provisions of a zoning ordinance or separate development regulations. Here are three incentives for floodplain conservation that some jurisdictions use:

1. Providing density incentives to individual property owners: A density incentive or

density credit system would allow specified land uses to occur at a more intense level within the portion of a parcel outside of the floodplain as compensation for conservation of flood-prone areas within the parcel. For example, if a 20-acre parcel is zoned for one acre lots and half of the parcel is in the floodplain, the community might consider allowing the ten “dry” acres to be developed with half acre lots, allowing the developer to still construct 20 homes. This would allow for a higher density of development in a portion of the property and would require the remaining, high-habitat-value floodplain to be conserved as a dedicated tract. This strategy is similar to the approach of clustering development, which is provided as a case study in Figure 6-3 of the FEMA 480 manual “Floodplain Management Requirements” and is often used in planned unit developments. Under either the density incentive or density credit approach, the overall project does not exceed the development density allowed by the zoning district.

2. **Transfer of development rights:** Transfer of development rights (TDR) programs allow for the transfer of development density from one parcel of land (with some conservation value, such as a floodplain or wetland) to another parcel or area that is planned for higher density development. Implementation and administration of TDR systems has proven challenging in many circumstances due to the required coordination in establishing density receiving and density giving areas and the required negotiation to set density credit values. However, a community, regional, or watershed-based TDR system may be a successful strategy for floodplain avoidance.
3. **Tax relief for conservation lands:** Tax relief is a financial incentive proven to help discourage development of sensitive lands. Such systems could provide an additional venue to encourage conservation of floodplain lands. However, tax relief systems generally do not provide permanent protection for natural resources as they often are terminated when the property ownership transfers.

### **2.5.2 Minimization**

If the entire project cannot avoid some development within the SFHA, it may be able to minimize the physical area and magnitude of impacts on the three floodplain functions. Some ideas for minimizing impacts include:

- Elevating structures in the SFHA on posts and piers to reduce the amount of fill/structure volume below the BFE.
- Reducing the amount of new impervious surface and using pervious surfaces where possible.
- Reducing the number of trees with a dbh of 6 inches or larger to be removed.

Many adverse effects result from degradation of natural processes or functions caused by actions during the construction period. Some best management practices to avoid these types of problems include, but are not necessarily limited to:

- Perform all work in dry weather and/or during the dry season.
- Incorporate erosion and sedimentation control measures.
- Use vegetable oil-based hydraulic fluids in all equipment working in water.
- Prepare and train crews on a spill prevention and pollution control plan and require that all equipment needed to contain a possible spill is available on-site before construction activities begin.
- Store, stage, and refuel equipment outside the riparian buffer zone.
- Inspect equipment daily for leaks.
- Time specific phases of work to occur during “species work windows,” when the species are not present or will not be affected.

### **2.5.3 Mitigation**

Mitigation must be conducted for any loss to floodplain storage, water quality, and riparian vegetation in the SFHA. This is commonly measured through an increase in fill or structures below the BFE, an increase in impervious surfaces, and the removal of trees 6 inches dbh or higher. Mitigation may include both natural methods (e.g., replanting of trees) or engineered methods (e.g., green infrastructure) depending on the floodplain function impacted.

Mitigation is recommended to occur on the same site and reach as which the impact occurs. Mitigation that does not occur within the same reach as where impacts occurred is subject to higher ratios that increase mitigation required to achieve no net loss. Mitigation must occur within the same watershed (i.e., within the same 10-digit hydrologic unit code area) and the same jurisdictional boundaries as the impact. For communities within the plan area of Oregon’s BiOp, FEMA requires that all development in the SFHA to be mitigated to achieve no net loss of the natural floodplain functions of floodplain storage, water quality, and vegetation through the ratios below.

| <b>Basic Mitigate Ratios</b>   | <b>Undeveloped Space (ft<sup>3</sup>)</b> | <b>Pervious Surface (ft<sup>2</sup>)</b> | <b>Trees (6”&lt;dbh≤20”)</b> | <b>Trees (20”&lt;dbh≤39”)</b> | <b>Trees (39”&lt;dbh)</b> |
|--|---|--|------------------------------|-------------------------------|---------------------------|
| <b>Floodway and/or RBZ</b>   | 2:1                                       | 1:1                                      | 3:1                          | 5:1                           | 6:1                       |
| <b>RBZ-Fringe</b>  | 1.5:1                                     | 1:1                                      | 2:1                          | 4:1                           | 5:1                       |
|  |   |  |                              |                               |                           |
|  |   |  |                              |                               |                           |
| <b><u>Mitigation multipliers</u></b>   |   |  |                              |                               |                           |
| <b>Mitigation onsite to Mitigation offsite, same reach</b>                                       | 100%                                      | 100%                                     | 100%                         | 100%                          | 100%                      |
| <b>Mitigation onsite to Mitigation offsite, different reach, same watershed (5<sup>th</sup>)</b> | 200%                                      | 200%                                     | 200%                         | 200%                          | 200%                      |
|  |   |  |                              |                               |                           |

Table 2: Mitigation Ratios Required to Achieve No Net Loss

Mitigation multipliers of 100% result in the required mitigation occurring at the same value described by the ratios above, while multipliers of 200% result in the required mitigation being doubled.

- For example, if only 500 ft<sup>2</sup> of the total 1000 ft<sup>2</sup> of required pervious surface mitigation can be conducted onsite and in the same reach, the remaining 500 ft<sup>2</sup> of required pervious surface mitigation occurring offsite at a different reach would double as a result of the 200% multiplier.

In instances where pervious surface replacement is not possible, mitigation can be achieved through infiltration of stormwater using low impact development (LID) or green infrastructure practices (e.g., rain gardens, bioswales). Or, where pervious surface replacement is not possible, due to impermeable soils or high-water tables, then through stormwater detention, to ensure no increase in peak volume of flow, followed by treatment to minimize pollutant loading.

In addition to higher mitigation ratios established by the no net loss standards, development in the RBZ is subject to the following conditions and performance standards:

- Habitat restoration activities in the RBZ are considered self-mitigating and are not subject to the no net loss standards described above.
- Functional-dependent uses are subject to the no net loss standards for development in the RBZ. Ancillary features in the RBZ (including manufacturing support facilities) are subject to the beneficial gain standard in addition to no net loss standards.
- Any other use of the RBZ requires a greater offset to achieve no net loss of floodplain functions, on top of the no net loss standards described above, through the beneficial

gain standard.

- Under FEMA’s beneficial gain standard, an area within the same reach of the project and equivalent to 5% of the total project area within the RBZ, shall be planted with native herbaceous and shrub vegetation and designated as open space.

#### **2.5.4 Select the Best Approach**

Selecting the best mitigation approach for the proposed project is an iterative process. Avoidance should be considered first as the preferred choice. If work must be done in a sensitive area, the project proponent should consider the costs of restoration and compensation. If those costs are too high, then avoidance should be reconsidered.

Selecting the best mitigation approach should be done in conjunction with the local, state, and federal regulatory offices for technical assistance regarding the discussion of preliminary project designs and assessment of environmental effects. Assistance from these sources, as well as possible review and assistance from neighboring tribal representatives, can greatly aid in designing an appropriate sequence of mitigation of actions. Early and periodic meetings with appropriate regulatory agencies will increase the likelihood that a mitigation plan will meet all regulatory requirements and can reduce total project costs and the probability of schedule delays during the approval process.

## **2.6 Step 6. Prepare the Mitigation Plan**

### **2.6.1 Objective**

As noted in Step 5, the objective of the mitigation plan is to assure that actions are taken to sufficiently and appropriately mitigate for negative impacts on ESA-listed populations and the natural functions and processes that support their habitats. The mitigation plan needs to provide sufficient detail to demonstrate how this will be done, using avoidance, minimization, replacement (rectify), and/or compensatory measures.

For all mitigation, the final plan (construction level detail) should not be drafted until the local permitting office(s), in coordination with state and federal agencies, as necessary, has agreed that the conceptual mitigation plan would meet the objectives. Coordination with local permitting officers will ensure that the scope of the planned mitigation will be commensurate with the scale of the impacts and will meet the objectives identified above.

### **2.6.2 Format**

Many communities have established formats that they have used to document mitigation plans within environmental or biological assessments. These formats are likely adequate for purposes of the NFIP. In Oregon, refer to Chapter 3 of [\*Wetland Mitigation Banking Guidebook for Oregon: Approval Process and Documentation\*](#). For detailed guidelines regarding what to include in a mitigation plan.

Here is an example mitigation plan outline:

1. Introduction, background, objectives
2. The project area, with map (taken from Step 1 of the assessment)
3. The project area's habitat, with map (taken from Step 2 of the assessment)
4. Project description (taken from Step 3 of the assessment)
5. Impact on habitat (taken from Step 4 of the assessment)
6. Alternatives considered (taken from Step 5, this should note why some alternatives, especially avoidance, were not selected)
7. Mitigation concept (an overall explanation of the measures)
8. Construction measures
  - a. Grading plan, with existing and post-construction topographical maps
  - b. Construction methods (e.g. equipment to be used)
  - c. Construction schedule
9. Permanent measures
  - a. Surface water management
  - b. Vegetation plan
  - c. Permanent buffer areas
  - d. Etc.
10. Post-construction monitoring and maintenance plan
11. Bond arrangements

### **2.6.3 Minimum Standards**

At a minimum, the mitigation plan's components 7, 8, 9, 10, and 11 of the outline above, should be consistent with the mitigation guidance requirements of the Army Corps of Engineers, and Chapter 3 of [\*Wetland Mitigation Banking Guidebook for Oregon: Approval Process and Documentation\*](#). In Oregon, mitigation plans must also be consistent with the community's critical areas regulations or Goal 5 implementation plans. If there are inconsistencies between these requirements, the standards that provide the highest level of environmental protection and the greatest likelihood of mitigation success take precedence.

### 3.0 Reviewing Habitat Assessments and Mitigation Plans

This section provides guidance for the local permit official. The following strategies may be used to ensure that habitat assessments and mitigation plans are prepared by a qualified individual or company and meet the intent of the Model Ordinance and this guidance.

**Establishing a List of Qualified Professionals:** The community could provide a list of qualified professionals who have experience in the area to developers and landowners. Another strategy for ensuring that qualified professionals are used could include developing qualification criteria for authors of habitat assessments and mitigation plans; see the box below for an example of qualifying criteria.

**Public Comment Period:** After habitat assessments and mitigation plans are submitted, the permitting official may require a public comment period before assessment conclusions and/or mitigation plans are approved. This approach could include a requirement that a public notice be posted in a publication of record. The intent of the public comment period would be to ensure that interested third parties would have ample opportunity to review and comment on proposed projects. This could alert the local permit official to issues or impacts not adequately addressed by an assessment or mitigation plan.

**Third Party Review:** The community may establish a system of third-party review(s) by qualified consultants or agencies. Third party review is frequently implemented by local jurisdictions for other environmental permits and approvals. The cost of third-party review could be passed on to the applicant. This may require establishment of a third-party review system in the local ordinance. Establishing a system of third party review could augment internal review within the local jurisdiction. Another option that may work for certain jurisdictions could be formalizing a system of internal review where qualified staff would determine the adequacy of submitted materials.

**Example Qualification Criteria**

The following criteria could be used by a community as part (likely not all) of the minimal criteria needed to conduct habitat assessment to ensure assessments and mitigation plans are prepared by a qualified consultant:

*Reports and plans shall be prepared by persons who have a minimum of a bachelor's degree in wildlife or fisheries habitat biology, or a related degree in a biological field from an accredited college or university with a minimum of four years' experience as a practicing fish or wildlife habitat biologist.*

Qualifying criteria should include further specifications for all wildlife, fisheries, habitat, and environmental professionals that could be relied upon to address the broad array of habitats and conditions that occur in flood-prone areas.

### 3.1 Review Checklists

Permit staff could develop a review checklist for assessment and mitigation plan submittals. A checklist would likely need to be tailored to specific types of development activity due to the site

and habitat-specific nature of habitat assessments and mitigation plans. See the worksheet attached to this guidance document for an example of a review checklist.

## 4.0 References and Resources

### 4.1 Federal and State Regulations and Guidance

*National Flood Insurance Program- Endangered Species Act Integration in Oregon*, FEMA Region 10. <https://www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration>

*CRS Credit for Habitat Protection*, FEMA, 2010. <http://training.fema.gov/EMIWeb/CRS/>

*Endangered Species Consultation Handbook*, National Marine Fisheries Service, 1998. [https://media.fisheries.noaa.gov/dam-migration/esa\\_section7\\_handbook\\_1998\\_opr5.pdf](https://media.fisheries.noaa.gov/dam-migration/esa_section7_handbook_1998_opr5.pdf)

*Endangered Species Act (ESA) Section 7(a)(2) Jeopardy and Adverse Modification of Critical Habitat Biological Opinion, ESA Section 7(a)(2) "Not Likely to Adversely Affect" Determination, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Implementation of the National Flood Insurance Program in the State of Oregon*. April 14, 2016. <https://media.fisheries.noaa.gov/2022-01/2016-04-14-fema-nfip-nwr-2011-3197.pdf>

*Mitigation guidance and JPA permit information*, Oregon State Department of Lands. <http://www.oregon.gov/DSL/WW/Pages/Permits.aspx>

*National Flood Insurance Program Floodplain Management Requirements A Study Guide & Desk Reference for Local Officials*, FEMA 480, 2005. <https://library.floods.org/cgi-bin/koha/opac-detail.pl?biblionumber=5219>

### 4.2 Maps and Databases

#### Critical habitat maps:

National Marine Fisheries Service: <http://www.nmfs.noaa.gov/pr/species/criticalhabitat.htm>

U.S. Fish and Wildlife Service: <http://criticalhabitat.fws.gov/>

*Forest Water Typing System*, Oregon State Water Resources Department. <http://www.oregon.gov/ODF/Documents/WorkingForests/WaterClassificationTechNote1.pdf>

*Threatened and Endangered Species List*, Oregon Department of fish and Wildlife. [http://www.dfw.state.or.us/wildlife/diversity/species/threatened\\_endangered\\_candidate\\_list.asp](http://www.dfw.state.or.us/wildlife/diversity/species/threatened_endangered_candidate_list.asp)

[Oregon Natural Heritage Program, Oregon State University Institute for Natural Resources.](http://inr.oregonstate.edu/orbic)  
<http://inr.oregonstate.edu/orbic>

Washington and Oregon State Soil Survey data, see the USDA Natural Resource Conservation Service maps or online *Web Soil Survey*. <http://websoilsurvey.nrcs.usda.gov/app/>

*Regional Guidance for Hydrologic and Hydraulic Studies in Support of the Model Ordinance for Floodplain Management under the National Flood Insurance Program and the Endangered Species Act*, FEMA Region 10, 2010.

[https://www.fema.gov/pdf/about/regions/regionx/draft\\_handh\\_guide.pdf](https://www.fema.gov/pdf/about/regions/regionx/draft_handh_guide.pdf)

### **4.3 Water Quality and Quantity**

*Section 401 Water Quality Certification: Post-Construction Stormwater Management Plan Submission Guidelines*, State of Oregon Department of Environmental Quality, 2016,

<https://www.oregon.gov/deq/wq/wqpermits/Pages/Section-401.aspx>

Standards for surface water quality in Oregon State, Department of Environmental Quality. <http://www.oregon.gov/deq/wq/Pages/WQ-Standards.aspx>

*Routine Road Maintenance | Water Quality and Habitat Guide, Best Management Practices*, State of Oregon Department of Transportation, 2020.

<http://www.oregon.gov/ODOT/GeoEnvironmental/Pages/Stormwater.aspx>

*Oregon State Water Quality Assessment*, Department of Environmental Quality.

<http://www.oregon.gov/deq/wq/Pages/WQ-Standards.aspx>

Water level data:

- U.S. Geological Survey: <http://wa.water.usgs.gov/data/>

### **4.4 Mitigation**

*Engineering with Nature – Alternative Techniques to Riprap Bank Stabilization*, FEMA Region 10, 2009.

[https://www.fema.gov/pdf/about/regions/regionx/Engineering\\_With\\_Nature\\_Web.pdf](https://www.fema.gov/pdf/about/regions/regionx/Engineering_With_Nature_Web.pdf)

*Habitat Conservation Planning Handbook*, US Fish & Wildlife Service and National Marine Fisheries Service, 1996. <https://www.fws.gov/library/collections/habitat-conservation-planning-handbook>

*Purpose of Mitigation and Mitigation Steps in Oregon State*, Oregon State Department of State Lands. <http://www.oregon.gov/dsl/WW/Pages/Mitigation.aspx>

*Wetland Mitigation Banking Guidebook for Oregon: Approval Process and Documentation*, Oregon Division of State Lands, 2000, [http://oregonexplorer.info/data\\_files/OE\\_topic/wetlands/documents/mitbank\\_guidebk.pdf](http://oregonexplorer.info/data_files/OE_topic/wetlands/documents/mitbank_guidebk.pdf)

*A Guide to the Removal-Fill Permit Process: Compensatory Mitigation Planning*, Oregon Division of State Lands, 2016, [https://www.oregon.gov/dsl/wetlands-waters/Documents/Removal\\_Fill\\_Guide.pdf](https://www.oregon.gov/dsl/wetlands-waters/Documents/Removal_Fill_Guide.pdf)

*Oregon Aquatic Habitat: Restoration and Enhancement Guide*, Oregon Plan for Salmon and Watersheds, 1999, <https://digital.osl.state.or.us/islandora/object/osl:16552>

#### **4.5 Additional References**

Invasive species information: Oregon Department of Agriculture. <http://www.oregon.gov/ODA/programs/Weeds/Pages/AboutWeeds.aspx>

*Low Impact Development*, Oregon Environmental Council. <http://www.oeconline.org/tag/low-impact-development/>



NFIP Oregon Implementation Program Guidance

# Model Floodplain Management Ordinance

For Participating Communities in the  
Implementation Plan Area



**FEMA**

Federal Emergency Management Agency  
Region 10  
Department of Homeland Security  
130 - 228<sup>th</sup> Street SW  
Bothell, WA 98021

Note to Communities: This document presents the draft model ordinance that for the Pre-Implementation Compliance Measures and is intended to closely represent most of the language that will be presented as Pathway A of the Draft Implementation Plan. It is built off the 2020 State of Oregon Model Flood Hazard Management Ordinance and the 2018 iteration of the Oregon Model ordinance for ESA Integration. It reflects the NMFS 2016 Biological Opinion (BiOp) (except where noted) and is informed by the 2023 NEPA Scoping effort.

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## Acronyms and Abbreviations

|       |                                     |
|-------|-------------------------------------|
| BiOp  | Biological Opinion                  |
| CFR   | Code of Federal Regulations         |
| CLOMR | Conditional Letter of Map Revision  |
| CRS   | Community Rating System             |
| dbh   | diameter breast height              |
| ESA   | Endangered Species Act              |
| FEMA  | Federal Emergency Management Agency |
| LID   | Low-Impact Development              |
| LOMR  | Letter of Map Revision              |
| MHHW  | Marine Higher-High Water line       |
| NFIP  | National Flood Insurance Program    |
| NMFS  | National Marine Fisheries Service   |
| OHWL  | Ordinary High Water Mark            |
| ORS   | Oregon Revised Statutes             |
| ORSC  | Oregon Residential Specialty Code   |
| OSSC  | Oregon Structural Specialty Code    |
| RBZ   | Riparian buffer zone                |
| SFHA  | Special Flood Hazard Area           |
| TB    | Technical Bulletin                  |

# SECTION 1. Introduction

FEMA has developed this model flood hazard management ordinance (“2024 model ordinance”) to address the requirements outlined in the Draft Implementation Plan for National Flood Insurance Program (NFIP)-Endangered Species Act (ESA) Integration in Oregon (“Oregon Implementation Plan”). The Federal Emergency Management Agency (FEMA) consulted with the National Marine Fisheries Service (NMFS) on potential effects of the implementation of the NFIP in Oregon on listed species under NMFS authority. In 2016, NMFS issued a Biological Opinion (BiOp), which recommended changes to the implementation of the NFIP in Oregon within the plan area (see the 2024 Draft Oregon Implementation Plan for NFIP-ESA Integration [2024 Draft Implementation Plan] for a description of the plan area).

As a result of the BiOp issued by NMFS, communities are required to demonstrate how floodplain development is compliant with the Endangered Species Act in the SFHA while the 2024 Draft Implementation Plan undergoes an Environmental Impact Statement (EIS). The 2024 model ordinance provides the tools a community would need to implement “Path A” of the 2024 Draft Implementation Plan and serves as one of three actions a community can take under Pre-Implementation Compliance Measures (PICM).

The regulatory language contained within the 2024 model ordinance can be adopted verbatim and incorporated into local floodplain and land use regulations, or a community may select those sections that are missing from its current floodplain ordinance and adopt those sections. The State of Oregon’s Model Flood Hazard Management Ordinance (2020) was used as a starting point, with additions to provide compliance with the Oregon Implementation Plan. The additional sections are clearly noted with yellow highlighting to simplify implementation for Oregon communities in the plan area that have already adopted the Oregon Model Flood Hazard Management Ordinance (2020).

This 2024 model ordinance provides a set of provisions to protect the built environment from flood damage and to minimize potential impacts of construction and reconstruction on public health and safety, property, water quality, and aquatic and riparian habitats. The requirements pertain to new development in Special Flood Hazard Area (see definitions), which includes the maintenance, repair, or remodel of existing structures and utilities when the existing footprint is expanded and/or the floodplain is further encroached upon.

The Oregon Implementation Plan and this model ordinance do not change the definition of development in 44 Code of Federal Regulations [CFR] 59.1.

“Development” is defined as “any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.” (44 C.F.R. 59.1)

The 2024 model ordinance provides compliance with federal and state statutes and with the Oregon Implementation Plan. The 2024 model ordinance conforms to the following:

- 37 1. The requirements of the NFIP, as specified in 44 CFR 59 and 60.
- 38 2. Oregon State codes to protect structures from flood damage that are specified in Oregon  
39 Structural Specialty Code (OSSC), Section 1612 and Oregon Residential Specialty Code  
40 (ORSC), Section R322.
- 41 3. Oregon Statewide Land Use Planning Goals
- 42 4. Provisions needed to meet the requirements of the Oregon Implementation Plan for NFIP-ESA  
43 Integration. These sections are highlighted in yellow in the model ordinance.

44 This 2024 model ordinance provides communities with ordinance language that complies with the  
45 NFIP-ESA Integration Implementation Plan. Adoption of the ordinance language will ensure  
46 compliance with the minimum standards for participation in the NFIP in the plan area in Oregon.  
47 Prior to adoption of the ordinance language, communities must have their locally proposed draft  
48 language reviewed by FEMA and/or the Oregon Department of Land Conservation and Development.

49 The model flood hazard ordinance includes standards and provisions that encourage sound  
50 floodplain management. The language is based on the minimum requirements of the NFIP found in  
51 44 CFR 59 and 60, Oregon’s statewide land use planning Goal 7, and Oregon specialty codes. The  
52 new language added to the state model floodplain ordinance, highlighted in yellow, provides  
53 compliance with the ESA for floodplain development in the plan area.

54 Adherent to the NMFS 2016 Biological Opinion, mitigation is necessary to ensure a no net loss in  
55 floodplain functions. FEMA’s 2024 Draft Oregon Implementation Plan identifies proxies that provide  
56 measurable actions that can prevent the no net loss of the parent floodplain functions. These  
57 proxies include undeveloped space, pervious surfaces, and trees to account for a no net loss in  
58 respective floodplain functions of floodplain storage, water quality, and vegetation. Mitigation of  
59 these proxies must be completed to ensure compliance with no net loss standards. No net loss  
60 applies to the net change in floodplain functions as compared to existing conditions at the time of  
61 proposed development and mitigation must be addressed to the floodplain function that is receiving  
62 the detrimental impact.

63 **1.1. How to Use this Document**

64 This 2024 model ordinance includes a Table of Contents and a Regulatory Crosswalk that identifies  
65 the federal and state standards that align to and are reflected in each section. Communities will  
66 need to review their ordinances and ensure that all the required components are included.

67 Please refer to [FEMA’s website](#) for information on how to determine whether or not your community  
68 is within the plan area.

69 **1.1.1. ORDINANCE LANGUAGE LEGEND:**

70 The colors are used in the text in the model ordinance to denote specific actions or sections with  
71 specific applicability.

- 72 • Black: Represents the existing NFIP and current state minimum requirements that are found  
73 in the 2020 Oregon Model Flood Hazard Management Ordinance.
- 74 • Red: Represents language that must be replaced with community specific information. Only  
75 include the appropriate language for your community.
- 76 • Purple: Represents language required for communities with Coastal High Hazard Areas  
77 mapped by FEMA (V Zones or Coastal A Zones). (DELETE ALL PURPLE LANGUAGE IF NOT A  
78 COASTAL COMMUNITY).
- 79 • Blue: Represents hyperlinks to other sections of the document or external websites.
- 80 • Yellow highlighting: Represents new ordinance language not in the 2020 Oregon Model Flood  
81 Hazard Management Ordinance. Communities that have previously adopted the state model  
82 ordinance may focus on the yellow highlighted sections.

83 **1.2. Changes from the 2020 Oregon Model Flood Hazard Management**  
84 **Ordinance**

85 This 2024 version of the Oregon Model Flood Hazard Ordinance (to be referred to herein as the  
86 “2024 Model Ordinance”), varies from the 2020 Oregon Model Flood Hazard Management  
87 Ordinance. with the addition of new content to be included for ESA compliance for NFIP-participating  
88 communities in the plan area. If no part of the Special Flood Hazard Area (SFHA) in your NFIP-  
89 participating community is in the Oregon NFIP-ESA Integration plan area, your community may  
90 continue to use the 2020 Oregon Model Flood Hazard Management Ordinance.

91 In general, the ordinance was revised to ensure that the implementation of the NFIP-ESA integration  
92 no net loss standards avoids or offsets adverse impacts on threatened and endangered species and  
93 their critical habitat. A summary of the primary changes found in the 2024 model ordinance is  
94 provided below:

- 95 1. New language has been added to incorporate the following no net loss standards:
  - 96 a. No net loss of undeveloped space (see Section 6.1.1).
  - 97 b. No net loss of pervious surface. (see Section 6.1.2).
  - 98 c. No net loss of trees equal to or greater than 6 inches dbh (i.e., tree diameter  
99 measured at 4.5 feet from the ground surface). (see Section 6.1.3).

- 100 2. Some definitions (see 2.0) have been added to provide context for the new no net loss  
101 standards from the Oregon Implementation Plan.
  
- 102 3. Language has been added:
  - 103 a. (see 6.3) to address activities that may require a floodplain development permit but  
104 are exempt from the no net loss requirement per the BiOp.
  
  - 105 b. (see 6.4) to address the specific requirements of the Riparian Buffer Zone (RBZ).
  
- 106 4. In general, the language in the 2024 model ordinance mirrors the language from the 2020  
107 Oregon Model Flood Hazard Management Ordinance. Minor edits to the 2020 language have  
108 been made for clarity, punctuation, and grammar.

### 109 1.3. Community Rating System

110 Implementation of the new no net loss standards related to NFIP-ESA integration may be eligible for  
111 credit under the Community Rating System (CRS). The CRS is explained further in CRS Credit for  
112 Habitat Protection, available online at: [https://crsresources.org/files/guides/crs-credit-for-habitat-  
113 protection.pdf](https://crsresources.org/files/guides/crs-credit-for-habitat-protection.pdf), and the 2017 CRS Coordinators' Manual, available online at:  
114 [https://www.fema.gov/sites/default/files/documents/fema\\_community-rating-system\\_coordinators-  
115 manual\\_2017.pdf](https://www.fema.gov/sites/default/files/documents/fema_community-rating-system_coordinators-manual_2017.pdf), and the 2021 Addendum to the 2017 CRS Coordinator's Manual, available  
116 online at: [https://www.fema.gov/sites/default/files/documents/fema\\_community-rating-  
117 system\\_coordinator-manual\\_addendum-2021.pdf](https://www.fema.gov/sites/default/files/documents/fema_community-rating-system_coordinator-manual_addendum-2021.pdf). The Association of State Floodplain Managers'  
118 Green Guide, also provides useful information on development techniques that avoid impacts on  
119 natural functions and values of floodplains. This document is available at:  
120 [www.floodsciencecenter.org/products/crs-community-resilience/green-guide/](http://www.floodsciencecenter.org/products/crs-community-resilience/green-guide/). Communities  
121 interested in CRS credits should contact their CRS specialist for additional information and review.

122 Implementation of the no net loss standards would most likely contribute to credits under the  
123 following CRS activities:

- 124 • Activity 430 Higher Regulatory Standards
  - 125 ○ Development Limitations
    - 126 ■ Prohibition of all fill (DL1a): This credit is for prohibiting all filling in the regulatory  
127 floodplain. To meet this standard, communities may NOT approve Conditional  
128 Letters or Letters of Map Revision based on Fill (CLOMR-F or LOMR-F). If a  
129 CLOMR-F or LOMR-F is issued for a property in a community, then DL1 credit will  
130 be denied. This applies to CLOMRs and LOMRs that include filling as part of the  
131 reason for requesting a map change. Minor filling may be allowed where needed  
132 to protect or restore natural floodplain functions, such as part of a channel  
133 restoration project.

- 134
- 135
- 136
- 137
- 138       ▪ The CRS manual describes a number of regulatory approaches that do not  
139       warrant credit under DL1; however, because the Oregon NFIP-ESA integration no  
140       net loss standards exceed the approaches described in the manual, a community  
141       meeting the Oregon no net loss standards should qualify for credit under DL1.
  
  - 142       ▪ Compensatory storage (DL1b): This credit is for regulations that require new  
143       development to provide compensatory storage at hydraulically equivalent sites up  
144       to a ratio of 1.5:1. Credit is not provided for:
    - 145           • Compensatory storage requirements in floodways only or in V Zones only,  
146           or
    - 147           • Stormwater management regulations that require a developer to  
148           compensate for any increase in runoff created by the development. This  
149           is credited under Activity 450.
  
  - 150       • Activity 450 Stormwater Management
    - 151           ○ Stormwater management regulations (SMR – 452a): This credit is the sum of four  
152           sub-elements: Size of development (Section 452.a(1), SZ); design storm used (Section  
153           452.a(2), DS); low-impact development (LID) regulations (Section 452.a(3), LID); and  
154           public agency authority to inspect and maintain, at the owner’s expense, private  
155           facilities constructed to comply with the ordinance (Section 452.a.(4), PUB).
  
    - 156           ▪ LID credits the community’s regulatory language that requires the  
157           implementation of LID techniques to the maximum extent feasible to control  
158           peak runoff when new development occurs. LID techniques can significantly  
159           reduce or eliminate the increase in stormwater runoff created by traditional  
160           development, encourage aquifer recharge, and promote better water quality.

1

## SECTION 2. Regulatory Crosswalk

2 The following table presents a crosswalk of the model ordinance sections against the relevant  
 3 federal and state laws, regulations, and policies. The new sections related to the Oregon NFIP-ESA  
 4 integration implementation (yellow highlighted sections of the model ordinance) are not listed in this  
 5 table and are related to compliance with the ESA.

| Ordinance Section  | 44 CFR and Technical Bulletin (TB) Citation(s)                                | State of Oregon Citation(s) (Goal 7, Specialty Codes*, Oregon Revised Statutes [ORS]) |
|--|---|---|
| 1.1 Statutory Authorization  | 59.22(a)(2)   | Goal 7; ORS 203.035 (Counties), ORS 197.175 (Cities)                                  |
| 1.2 Findings of Fact   | 59.22(a)(1)   | Goal 7  |
| 1.3 Statement of Purpose   | 59.2; 59.22(a)(1) and (8); 60.22  | Goal 7  |
| 1.4 Methods of Reducing Flood Losses   | 60.22   | Goal 7  |
| 2.0 Definitions  | 59.1; 33 CFR 328.3(c)(7)  | Goal 7  |
| 3.1 Lands to Which this Ordinance Applies  | 59.22(a)  | Goal 7  |
| 3.2 Basis for Establishing the Special Flood Hazard Areas                                    | 59.22(a)(6); 60.2(h)  | Goal 7  |
| 3.3 Coordination with Specialty Codes Adopted by the State of Oregon Building Codes Division |   | ORS 455   |
| 3.4.1 Compliance   | 60.1(b) – (d)   | Goal 7  |
| 3.4.2 Penalties for Noncompliance  | 60.1(b) – (d)   | Goal 7  |
| 3.5.1 Abrogation   | 60.1(b) – (d)   | Goal 7  |
| 3.5.2 Severability   |   |   |
| 3.6 Interpretation   | 60.1(b) – (d)   | Goal 7  |
| 3.7.1 Warning  |   |   |
| 3.7.2 Disclaimer of Liability  |   |   |
| 4.1 Designation of the Floodplain Administrator  | 59.22(b)(1)   | Goal 7  |
| 4.2.1 Permit Review  | 60.3(a)(1) – (3); 60.3(c)(10)   | Goal 7  |
| 4.2.2 Information to be Obtained and Maintained  | 59.22(a)(9)(iii); 60.3(b)(5)(i) and (iii); 60.3(c)(4); 60.3(b)(3); 60.6(a)(6) | Goal 7; 105.9; 110.33; R106.1.4; R109.1.3; R109.1.6.1; R322.1.10; R322.3.6            |

## Regulatory Crosswalk

| Ordinance Section   | 44 CFR and Technical Bulletin (TB) Citation(s)  | State of Oregon Citation(s) (Goal 7, Specialty Codes*, Oregon Revised Statutes [ORS]) |
|---|---|---|
| 4.2.3.1 Community Boundary Alterations  | 59.22(a)(9)(v)  | Goal 7  |
| 4.2.3.2 Watercourse Alterations   | 60.3(b)(6) – (7),<br>65.6(12-13)  | Goal 7  |
| 4.2.3.3 Requirement to Submit New Technical Data                                    | 65.3, 65.6, 65.7, 65.12   | Goal 7  |
| 4.2.4 Substantial Improvement and Substantial Damage Assessments and Determinations | 59.1; 60.3(a)(3);<br>60.3(b)(2); 60.3(b)(5)(i);<br>60.3(c)(1), (2), (3), (5) –<br>(8), (10), (12);<br>60.3(d)(3);<br>60.3(e)(4), (5), (8) | Goal 7  |
| 4.3.1 Floodplain Development Permit Required  | 60.3(a)(1)  | Goal 7  |
| 4.3.2 Application for Development Permit  | 60.3(a)(1); 60.3(b)(3);<br>60.3(c)(4)   | Goal 7; Oregon Residential Specialty Code (R) 106.1.4; R322.3.6                       |
| 4.4 Variance Procedure  | 60.6(a)   | Goal 7  |
| 4.4.1 Conditions for Variances  | 60.6(a)   | Goal 7  |
| 4.4.2 Variance Notification   | 60.6(a)(5)  | Goal 7  |
| 5.1.1 Alteration of Watercourses  | 60.3(b)(6) and (7)  | Goal 7  |
| 5.1.2 Anchoring   | 60.3(a)(3); 60.3(b)(1), (2),<br>and (8)   | Goal 7; R322.1.2  |
| 5.1.3 Construction Materials and Methods  | 60.3(a)(3), TB 2; TB 11   | Goal 7;<br>R322.1.3;<br>R322.1.3  |
| 5.1.4.1 Water Supply, Sanitary Sewer, and On-Site Waste Disposal Systems            | 60.3(a)(5) and (6)  | Goal 7; R322.1.7  |
| 5.1.4.2 Electrical, Mechanical, Plumbing, and Other Equipment                       | 60.3(a)(3)  | Goal 7; R322.1.6;   |
| 5.1.5 Tanks   |   | R322.2.4; R322.3.7  |
| 5.1.6 Subdivision Proposals   | 60.3(a)(4)(i) – (iii);<br>60.3(b)(3)  | Goal 7  |
| 5.1.7 Use of Other Base Flood Data  | 60.3(a)(3); 60.3(b)(4);<br>60.3(b)(3); TB 10-01   | Goal 7; R322.3.2  |
| 5.1.8 Structures Located in Multiple or Partial Flood Zones                         |   | R322.1  |
| 5.2.1 Flood Openings  | 60.3(c)(5); TB 1; TB 11   | Goal 7;<br>R322.2.2;  |

## Regulatory Crosswalk

| Ordinance Section  | 44 CFR and Technical Bulletin (TB) Citation(s)                   | State of Oregon Citation(s) (Goal 7, Specialty Codes*, Oregon Revised Statutes [ORS])   |
|--|--|---|
|  |  | R322.2.2.1  |
| 5.2.2 Garages  | TB 7-93  | R309  |
| 5.2.3.1 Before Regulatory Floodway   | 60.3(c)(10)  | Goal 7  |
| 5.2.3.2 Residential Construction   | 60.3(c)(2)   | Goal 7  |
| 5.2.3.3 Non-residential Construction   | 60.3(c)(3) - (5); TB 3   | Goal 7;<br>R322.2.2;<br>R322.2.2.1  |
| 5.2.3.4 Manufactured Dwellings   | 60.3(b)(8); 60.3(c)(6)(iv);<br>60.3(c)(12)(ii)                   | Goal 7; State of OR<br>Manufactured Dwelling<br>Installation Specialty<br>Code (MDISC) and<br>associated statewide<br>Code Interpretation<br>dated 1/1/2011                           |
| 5.2.3.5 Recreational Vehicles  | 60.3(c)(14)(i) - (iii)   | Goal 7  |
| 5.2.3.6 Appurtenant (Accessory) Structures   | 60.3(c)(5); TB 1; TB 7-93  | Oregon Structural<br>Specialty Code (S)<br>105.2; R105.2  |
| 5.2.4 Floodways  | 60.3(d); FEMA Region X<br>Fish Enhancement Memo<br>(Mark Riebau) | Goal 7  |
| 5.2.5 Standards for Shallow Flooding Areas   | 60.3(c)(7), (8), (11),<br>and (14)                               | Goal 7  |
| 5.3 Specific Standards for Coastal High Hazard Flood Zones, and<br>5.3.1 Development Standards | 60.3(e); TB 5; TB 8; TB 9  | Goal 7; R322.3.1;<br>R322.3.2; R322.3.3;<br>R322.3.4; R322.3.5  |
| 5.3.1.1 Manufactured Dwelling Standards<br>for Coastal High Hazard Zones                       | 60.3(e)(8)(i) - (iii)  | Goal 7;<br>RR322.3.2;<br>State of OR<br>Manufactured<br>Dwelling<br>Installation<br>Specialty Code<br>(MDISC) and<br>associated<br>statewide Code<br>Interpretation<br>dated 1/1/2011 |

**Regulatory Crosswalk**

| Ordinance Section  | 44 CFR and Technical Bulletin (TB) Citation(s) | State of Oregon Citation(s) (Goal 7, Specialty Codes*, Oregon Revised Statutes [ORS]) |
|--|--|---|
| 5.3.1.2 Recreational Vehicle Standards for Coastal High Hazard Zones | 60.3(e)(9)(i)- (iii)                           | Goal 7  |
| 5.3.1.3 Tank Standards for Coastal High Hazard Zones                 |  | R322.2.4; R322.3.7  |

\*[Link to Oregon Specialty Codes \(https://www.oregon.gov/bcd/codes-stand/Pages/adopted-codes.aspx\)](https://www.oregon.gov/bcd/codes-stand/Pages/adopted-codes.aspx)

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# SECTION 3. Model Ordinance Language

## 1.0 STATUTORY AUTHORITY, FINDINGS OF FACT, PURPOSE, AND METHODS

### 1.1 STATUTORY AUTHORIZATION

The State of Oregon has in **ORS 203.035 (COUNTIES) OR ORS 197.175 (CITIES)** delegated the responsibility to local governmental units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry.

Therefore, the **COMMUNITY NAME** does ordain as follows:

### 1.2 FINDINGS OF FACT

- A. The flood hazard areas of **COMMUNITY NAME** **preserve the natural and beneficial values served by floodplains but** are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B. These flood losses may be caused by the cumulative effect of obstructions in special flood hazard areas which increase flood heights and velocities, and when inadequately anchored, cause damage in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

### 1.3 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote public health, safety, and general welfare, and to minimize public and private losses due to flooding in special flood hazard areas by provisions designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Preserve natural and beneficial floodplain functions;**
- D. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- E. Minimize prolonged business interruptions;

- 31 F. Minimize damage to public facilities and utilities such as water and gas mains;  
32 electric, telephone and sewer lines; and streets and bridges located in special flood  
33 hazard areas;
- 34 G. Help maintain a stable tax base by providing for the sound use and development of  
35 flood hazard areas so as to minimize blight areas caused by flooding;
- 36 H. Notify potential buyers that the property is in a special flood hazard area;
- 37 I. Notify those who occupy special flood hazard areas that they assume responsibility  
38 for their actions;
- 39 J. Participate in and maintain eligibility for flood insurance and disaster relief.

40 **1.4 METHODS OF REDUCING FLOOD LOSSES**

41 In order to accomplish its purposes, this ordinance includes methods and provisions for:

- 42 A. Restricting or prohibiting development which is dangerous to health, safety, and  
43 property due to water or erosion hazards, or which result in damaging increases in  
44 erosion or in flood heights or velocities;
- 45 B. Requiring that development vulnerable to floods, including facilities which serve such  
46 uses, be protected against flood damage at the time of initial construction;
- 47 C. Controlling the alteration of natural floodplains, stream channels, and natural  
48 protective barriers, which help accommodate or channel flood waters;
- 49 D. Controlling filling, grading, dredging, and other development which may increase  
50 flood damage;
- 51 E. Preventing or regulating the construction of flood barriers which will unnaturally divert  
52 flood waters or may increase flood hazards in other areas.
- 53 F. Employing a standard of “no net loss” of natural and beneficial floodplain functions.

54 **2.0 DEFINITIONS**

55 Unless specifically defined below, words or phrases used in this ordinance shall be  
56 interpreted so as to give them the meaning they have in common usage.

57 **Appeal:** A request for a review of the interpretation of any provision of this ordinance or a  
58 request for a variance.

59 **Area of shallow flooding:** A designated Zone AO, AH, AR/AO or AR/AH on a community’s  
60 Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of  
61 flooding to an average depth of one to three feet where a clearly defined channel

62 does not exist, where the path of flooding is unpredictable, and where velocity  
63 flow may be evident. Such flooding is characterized by ponding or sheet flow.

64 **Area of special flood hazard:** The land in the floodplain within a community subject to a 1  
65 percent or greater chance of flooding in any given year. It is shown on the Flood  
66 Insurance Rate Map (FIRM) as Zone A, AO, AH, A1-30, AE, A99, AR (V, V1-30, VE).  
67 “Special flood hazard area” is synonymous in meaning and definition with the  
68 phrase “area of special flood hazard.”

69 **Base flood:** The flood having a one percent chance of being equaled or exceeded in any  
70 given year.

71 **Base flood elevation (BFE):** The elevation to which floodwater is anticipated to rise during  
72 the base flood.

73 **Basement:** Any area of the building having its floor subgrade (below ground level) on all  
74 sides.

75 **Breakaway wall:** A wall that is not part of the structural support of the building and is  
76 intended through its design and construction to collapse under specific lateral  
77 loading forces, without causing damage to the elevated portion of the building or  
78 supporting foundation system.

79 **Coastal high hazard area:** An area of special flood hazard extending from offshore to the  
80 inland limit of a primary frontal dune along an open coast and any other area  
81 subject to high velocity wave action from storms or seismic sources.

82 **Development:** Any man-made change to improved or unimproved real estate, including  
83 but not limited to buildings or other structures, mining, dredging, filling, grading,  
84 paving, excavation or drilling operations or storage of equipment or materials.

85 **Fill:** Placement of any materials such as soil, gravel, crushed stone, or other materials  
86 that change the elevation of the floodplain. The placement of fill is considered  
87 “development.”

88 **Fish Accessible Space:** The volumetric space available to fish to access.

89 **Fish Egress-able Space:** The volumetric space available to fish to exit or leave from.

90 **Flood or Flooding:**

91 (a) A general and temporary condition of partial or complete inundation of normally  
92 dry land areas from:

93 (1) The overflow of inland or tidal waters.

94 (2) The unusual and rapid accumulation or runoff of surface waters from any  
95 source.

96 (3) Mudslides (i.e., mudflows) which are proximately caused by flooding as  
97 defined in paragraph (a)(2) of this definition and are akin to a river of liquid  
98 and flowing mud on the surfaces of normally dry land areas, as when earth is  
99 carried by a current of water and deposited along the path of the current.

100 (b) The collapse or subsidence of land along the shore of a lake or other body of  
101 water as a result of erosion or undermining caused by waves or currents of water  
102 exceeding anticipated cyclical levels or suddenly caused by an unusually high  
103 water level in a natural body of water, accompanied by a severe storm, or by an  
104 unanticipated force of nature, such as flash flood or an abnormal tidal surge, or  
105 by some similarly unusual and unforeseeable event which results in flooding as  
106 defined in paragraph (a)(1) of this definition.

107 **Flood elevation study:** an examination, evaluation and determination of flood hazards  
108 and, if appropriate, corresponding water surface elevations, or an examination,  
109 evaluation and determination of mudslide (i.e., mudflow) and/or flood-related  
110 erosion hazards.

111 **Flood Insurance Rate Map (FIRM):** The official map of a community, on which the Federal  
112 Insurance Administrator has delineated both the special hazard areas and the  
113 risk premium zones applicable to the community. A FIRM that has been made  
114 available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

115 **Flood Insurance Study (FIS):** See "Flood elevation study."

116 **Floodway:** The channel of a river or other watercourse and the adjacent land areas that  
117 must be reserved in order to discharge the base flood without cumulatively  
118 increasing the water surface elevation more than a designated height. Also  
119 referred to as "Regulatory Floodway."

120 **Functionally Dependent Use:** A use which cannot perform its intended purpose unless it  
121 is located or carried out in proximity to water. The term includes only docking  
122 facilities, port facilities that are necessary for the loading and unloading of cargo  
123 or passengers, and ship building and ship repair facilities, but does not include  
124 long-term storage or related manufacturing facilities.

125 **Green Infrastructure:** Use of natural or human-made hydrologic features to manage  
126 water and provide environmental and community benefits. Green infrastructure  
127 uses management approaches and technologies that use, enhance, and/or  
128 mimic the natural hydrologic cycle processes of infiltration, evapotranspiration,  
129 and reuse. At a large scale, it is an interconnected network of green space that  
130 conserves natural systems and provides assorted benefits to human populations.  
131 At a local scale, it manages stormwater by infiltrating it into the ground where it is  
132 generated using vegetation or porous surfaces, or by capturing it for later reuse.  
133 Green infrastructure practices can be used to achieve no net loss of pervious  
134 surface by creating infiltration of stormwater in an amount equal to or greater  
135 than the infiltration lost by the placement of new impervious surface.

136 **Habitat Restoration Activities:** Activities with the sole purpose of restoring habitats that  
137 have only temporary impacts and long-term benefits to habitat. Such projects  
138 cannot include ancillary structures such as a storage shed for maintenance  
139 equipment, must demonstrate that no rise in the BFE would occur as a result of  
140 the project and obtain a CLOMR and LOMR, and have obtained any other  
141 required permits (e.g., CWA Section 404 permit).

142 **Hazard Trees:** Standing dead, dying, or diseased trees or ones with a structural defect  
143 that makes it likely to fail in whole or in part and that present a potential hazard  
144 to a structure or as defined by the community.

145 **Highest adjacent grade:** The highest natural elevation of the ground surface prior to  
146 construction next to the proposed walls of a structure.

147 **Historic structure:** Any structure that is:

148 (a) Listed individually in the National Register of Historic Places (a listing maintained  
149 by the Department of Interior) or preliminarily determined by the Secretary of the  
150 Interior as meeting the requirements for individual listing on the National  
151 Register;

152 (b) Certified or preliminarily determined by the Secretary of the Interior as  
153 contributing to the historical significance of a registered historic district or a  
154 district preliminarily determined by the Secretary to qualify as a registered  
155 historic district;

156 (c) Individually listed on a state inventory of historic places in states with historic  
157 preservation programs which have been approved by the Secretary of Interior; or

158 (d) Individually listed on a local inventory of historic places in communities with  
159 historic preservation programs that have been certified either:

160 (1) By an approved state program as determined by the Secretary of the Interior  
161 or

162 (2) Directly by the Secretary of the Interior in states without approved programs.

163 **Hydraulically Equivalent Elevation:** A location (e.g., a site where no net loss standards are  
164 implemented) that is approximately equivalent to another (e.g., the impacted  
165 site) relative to the same 100-year water surface elevation contour or base flood  
166 elevation. This may be estimated based on a point that is along the same  
167 approximate line perpendicular to the direction of flow.

168 **Hydrologically Connected:** The interconnection of groundwater and surface water such  
169 that they constitute one water supply and use of either results in an impact to  
170 both.

171 **Impervious Surface:** A surface that cannot be penetrated by water and thereby prevents  
172 infiltration and increases the amount and rate of surface water runoff, leading to  
173 erosion of stream banks, degradation of habitat, and increased sediment loads  
174 in streams. Such surfaces can accumulate large amounts of pollutants that are  
175 then “flushed” into local water bodies during storms and can also interfere with  
176 recharge of groundwater and the base flows to water bodies.

177 **Low Impact Development:** An approach to land development (or redevelopment) that  
178 works with nature to manage stormwater as close to its source as possible. It  
179 employs principles such as preserving and recreating natural landscape features  
180 and minimizing effective imperviousness to create functional and appealing site  
181 drainage that treats stormwater as a resource rather than a waste product. Low  
182 Impact Development refers to designing and implementing practices that can be  
183 employed at the site level to control stormwater and help replicate the  
184 predevelopment hydrology of the site. Low impact development helps achieve no  
185 net loss of pervious surface by infiltrating stormwater in an amount equal to or  
186 greater than the infiltration lost by the placement of new impervious surface. LID  
187 is a subset of green infrastructure.

188 **Lowest floor:** The lowest floor of the lowest enclosed area (including basement). An  
189 unfinished or flood resistant enclosure, usable solely for parking of vehicles,  
190 building access or storage in an area other than a basement area is not  
191 considered a building’s lowest floor, provided that such enclosure is not built so  
192 as to render the structure in violation of the applicable non-elevation design  
193 requirements of this ordinance.

194 **Manufactured dwelling:** A structure, transportable in one or more sections, which is built  
195 on a permanent chassis and is designed for use with or without a permanent  
196 foundation when attached to the required utilities. The term "manufactured  
197 dwelling" does not include a "recreational vehicle" and is synonymous with  
198 “manufactured home.”

199 **Manufactured dwelling park or subdivision:** A parcel (or contiguous parcels) of land  
200 divided into two or more manufactured dwelling lots for rent or sale.

201 **Mean Higher-High Water:** The average of the higher-high water height of each tidal day  
202 observed over the National Tidal Datum Epoch.

203 **Mean sea level:** For purposes of the National Flood Insurance Program, the National  
204 Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which Base Flood  
205 Elevations shown on a community's Flood Insurance Rate Map are referenced.

206 **New construction:** For floodplain management purposes, “new construction” means  
207 structures for which the “start of construction” commenced on or after the effective  
208 date of a floodplain management regulation adopted by **COMMUNITY NAME** and  
209 includes any subsequent improvements to such structures.

210 **No Net Loss:** A standard where adverse impacts must be avoided or offset through  
211 adherence to certain requirements so that there is no net change in the function

212 from the existing condition when a development application is submitted to the state,  
213 tribal, or local jurisdiction. The floodplain functions of floodplain storage, water  
214 quality, and vegetation must be maintained.

215 **Offsite:** Mitigation occurring outside of the project area.

216 **Onsite:** Mitigation occurring within the project area.

217 **Ordinary High Water Mark:** The line on the shore established by the fluctuations of water  
218 and indicated by physical characteristics such as a clear, natural line impressed  
219 on the bank; shelving; changes in the character of soil; destruction of terrestrial  
220 vegetation; the presence of litter and debris; or other appropriate means that  
221 consider the characteristics of the surrounding areas.

222 **Qualified Professional:** Appropriate subject matter expert that is defined by the  
223 community.

224 **Reach:** A section of a stream or river along which similar hydrologic conditions exist, such  
225 as discharge, depth, area, and slope. It can also be the length of a stream or river  
226 (with varying conditions) between major tributaries or two stream gages, or a  
227 length of river for which the characteristics are well described by readings at a  
228 single stream gage.

229 **Recreational vehicle:** A vehicle which is:

- 230 (a) Built on a single chassis;
- 231 (b) 400 square feet or less when measured at the largest horizontal projection;
- 232 (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- 233 (d) Designed primarily not for use as a permanent dwelling but as temporary living  
234 quarters for recreational, camping, travel, or seasonal use.

235 **Riparian:** Of, adjacent to, or living on, the bank of a river, lake, pond, or other water body.

236 **Riparian Buffer Zone (RBZ):** The outer boundary of the riparian buffer zone is measured  
237 from the ordinary high water line of a fresh waterbody (lake; pond; ephemeral,  
238 intermittent, or perennial stream) or mean higher-high water line of a marine  
239 shoreline or tidally influenced river reach to 170 feet horizontally on each side of  
240 the stream or 170 feet inland from the MHHW. The riparian buffer zone includes  
241 the area between these outer boundaries on each side of the stream, including  
242 the stream channel. Where the RBZ is larger than the special flood hazard area,  
243 the no net loss standards shall only apply to the area within the special flood  
244 hazard area.

245 **Riparian Buffer Zone Fringe:** The area outside of the RBZ and floodway but still within the  
246 SFHA.

247 **Silviculture:** The art and science of controlling the establishment, growth, composition,  
248 health, and quality of forests and woodlands.

249 **Special flood hazard area:** See “Area of special flood hazard” for this definition.

250 **Start of construction:** Includes substantial improvement and means the date the building  
251 permit was issued, provided the actual start of construction, repair,  
252 reconstruction, rehabilitation, addition, placement, or other improvement was  
253 within 180 days from the date of the permit. The actual start means either the  
254 first placement of permanent construction of a structure on a site, such as the  
255 pouring of slab or footings, the installation of piles, the construction of columns,  
256 or any work beyond the stage of excavation; or the placement of a manufactured  
257 dwelling on a foundation. Permanent construction does not include land  
258 preparation, such as clearing, grading, and filling; nor does it include the  
259 installation of streets and/or walkways; nor does it include excavation for a  
260 basement, footings, piers, or foundations or the erection of temporary forms; nor  
261 does it include the installation on the property of accessory buildings, such as  
262 garages or sheds not occupied as dwelling units or not part of the main structure.  
263 For a substantial improvement, the actual start of construction means the first  
264 alteration of any wall, ceiling, floor, or other structural part of a building, whether  
265 or not that alteration affects the external dimensions of the building.

266 **Structure:** For floodplain management purposes, a walled and roofed building, including  
267 a gas or liquid storage tank, that is principally above ground, as well as a  
268 manufactured dwelling.

269 **Substantial damage:** Damage of any origin sustained by a structure whereby the cost of  
270 restoring the structure to its before damaged condition would equal or exceed 50  
271 percent of the market value of the structure before the damage occurred.

272 **Substantial improvement:** Any reconstruction, rehabilitation, addition, or other  
273 improvement of a structure, the cost of which equals or exceeds 50 percent of  
274 the market value of the structure before the "start of construction" of the  
275 improvement. This term includes structures which have incurred "substantial  
276 damage," regardless of the actual repair work performed. The term does not,  
277 however, include either:

278 (a) Any project for improvement of a structure to correct existing violations of state or  
279 local health, sanitary, or safety code specifications which have been identified by  
280 the local code enforcement official and which are the minimum necessary to  
281 assure safe living conditions; or

282 (b) Any alteration of a "historic structure," provided that the alteration will not  
283 preclude the structure's continued designation as a "historic structure."

284 **Undeveloped Space:** The volume of flood capacity and fish-accessible/egress-able  
285 habitat from the existing ground to the Base Flood Elevation that is undeveloped. Any  
286 form of development including, but not limited to, the addition of fill, structures, concrete

287 structures (vaults or tanks), pilings, levees and dikes, or any other development that  
288 reduces flood storage volume and fish accessible/egress-able habitat must achieve no  
289 net loss.

290 **Variance:** A grant of relief by **COMMUNITY NAME** from the terms of a floodplain  
291 management regulation.

292 **Violation:** The failure of a structure or other development to be fully compliant with the  
293 community's floodplain management regulations. A structure or other  
294 development without the elevation certificate, other certifications, or other  
295 evidence of compliance required in this ordinance is presumed to be in violation  
296 until such time as that documentation is provided.

297 **3.0 GENERAL PROVISIONS**

298 **3.1 LANDS TO WHICH THIS ORDINANCE APPLIES**

299 This ordinance shall apply to all special flood hazard areas within the jurisdiction of  
300 **COMMUNITY NAME**.

301 **3.2 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS**

302 The special flood hazard areas identified by the Federal Insurance Administrator in a  
303 scientific and engineering report entitled "The Flood Insurance Study (FIS) for **EXACT**  
304 **TITLE OF FLOOD INSURANCE STUDY FOR COMMUNITY**", dated **DATE (MONTH DAY, FOUR**  
305 **DIGIT YEAR)**, with accompanying Flood Insurance Rate Maps (FIRMs) **LIST ALL EFFECTIVE**  
306 **FIRM PANELS HERE (UNLESS ALL PANELS ARE BEING REPLACED THROUGH A NEW**  
307 **COUNTY\_WIDE MAP THAT INCORPORATES ALL PREVIOUS PANELS/VERSIONS, IN THAT**  
308 **SITUATION PANELS DO NOT NEED TO BE INDIVIDUALLY LISTED)** are hereby adopted by  
309 reference and declared to be a part of this ordinance. The FIS and FIRM panels are on  
310 file at **INSERT THE LOCATION (I.E. COMMUNITY PLANNING DEPARTMENT LOCATED IN**  
311 **THE COMMUNITY ADMINISTRATIVE BUILDING)**.

312 **3.3 COORDINATION WITH STATE OF OREGON SPECIALTY CODES**

313 Pursuant to the requirement established in ORS 455 that the **COMMUNITY NAME**  
314 administers and enforces the State of Oregon Specialty Codes, the **COMMUNITY NAME**  
315 does hereby acknowledge that the Oregon Specialty Codes contain certain provisions  
316 that apply to the design and construction of buildings and structures located in special  
317 flood hazard areas. Therefore, this ordinance is intended to be administered and  
318 enforced in conjunction with the Oregon Specialty Codes.

319 **3.4 COMPLIANCE AND PENALTIES FOR NONCOMPLIANCE**

320 **3.4.1 COMPLIANCE**

321 All development within special flood hazard areas is subject to the terms of this  
322 ordinance and required to comply with its provisions and all other applicable  
323 regulations.

324 **3.4.2 PENALTIES FOR NONCOMPLIANCE**

325 No structure or land shall hereafter be constructed, located, extended,  
326 converted, or altered without full compliance with the terms of this ordinance and  
327 other applicable regulations. Violations of the provisions of this ordinance by  
328 failure to comply with any of its requirements (including violations of conditions  
329 and safeguards established in connection with conditions) shall constitute a  
330 (INFRACTION TYPE (I.E. MISDEMEANOR) AND PENALTIES PER STATE/LOCAL LAW  
331 ASSOCIATED WITH SPECIFIED INFRACTION TYPE (I.E. ANY PERSON WHO  
332 VIOLATES THE REQUIREMENTS OF THIS ORDINANCE SHALL UPON CONVICTION  
333 THEREOF BE FINED NOT MORE THAN A SPECIFIED AMOUNT OF MONEY...)  
334 Nothing contained herein shall prevent the COMMUNITY NAME from taking such  
335 other lawful action as is necessary to prevent or remedy any violation.

336 **3.5 ABROGATION AND SEVERABILITY**

337 **3.5.1 ABROGATION**

338 This ordinance is not intended to repeal, abrogate, or impair any existing  
339 easements, covenants, or deed restrictions. However, where this ordinance and  
340 another ordinance, easement, covenant, or deed restriction conflict or overlap,  
341 whichever imposes the more stringent restrictions shall prevail.

342 **3.5.2 SEVERABILITY**

343 This ordinance and the various parts thereof are hereby declared to be  
344 severable. If any section clause, sentence, or phrase of the Ordinance is held to  
345 be invalid or unconstitutional by any court of competent jurisdiction, then said  
346 holding shall in no way effect the validity of the remaining portions of this  
347 Ordinance.

348 **3.6 INTERPRETATION**

349 In the interpretation and application of this ordinance, all provisions shall be:

- 350 A. Considered as minimum requirements;
- 351 B. Liberally construed in favor of the governing body; and
- 352 C. Deemed neither to limit nor repeal any other powers granted under state statutes.

353 **3.7 WARNING AND DISCLAIMER OF LIABILITY**

354 **3.7.1 WARNING**

355 The degree of flood protection required by this ordinance is considered  
356 reasonable for regulatory purposes and is based on scientific and engineering  
357 considerations. Larger floods can and will occur on rare occasions. Flood heights  
358 may be increased by man-made or natural causes. This ordinance does not imply

359 that land outside the areas of special flood hazards or uses permitted within  
360 such areas will be free from flooding or flood damages.

361 **3.7.2 DISCLAIMER OF LIABILITY**

362 This ordinance shall not create liability on the part of the **COMMUNITY NAME**, any  
363 officer or employee thereof, or the Federal Insurance Administrator for any flood  
364 damages that result from reliance on this ordinance or any administrative  
365 decision lawfully made hereunder.

366 **4.0 ADMINISTRATION**

367 **4.1 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR**

368 The **INDIVIDUAL JOB TITLE** is hereby appointed to administer, implement, and enforce  
369 this ordinance by granting or denying development permits in accordance with its  
370 provisions. The Floodplain Administrator may delegate authority to implement these  
371 provisions.

372 [Additional Recommended Language Provided in Appendix B](#)

373 **4.2 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR**

374 Duties of the floodplain administrator, or their designee, shall include, but not be limited  
375 to:

376 **4.2.1 PERMIT REVIEW**

377 Review all development permits to:

- 378 A. Determine that the permit requirements of this ordinance have been  
379 satisfied;
- 380 B. Determine that all other required local, state, and federal permits have been  
381 obtained and approved;
- 382 C. Determine if the proposed development is located in a floodway.
  - 383 i. If located in the floodway assure that the floodway provisions of this  
384 ordinance in section **5.2.4** are met; and
  - 385 ii. Determine if the proposed development is located in an area where  
386 Base Flood Elevation (BFE) data is available either through the Flood  
387 Insurance Study (FIS) or from another authoritative source. If BFE data  
388 is not available then ensure compliance with the provisions of sections  
389 **5.1.7**; and

- 390                                   iii.    Provide to building officials the Base Flood Elevation (BFE) (ADD  
391    **FREEBOARD IF COMMUNITY HAS HIGHER ELEVATION STANDARDS**)  
392    applicable to any building requiring a development permit.
  
- 393                                   D.    Determine if the proposed development qualifies as a substantial  
394    improvement as defined in section **2.0**.
  
- 395                                   E.    Determine if the proposed development activity is a watercourse alteration.  
396    If a watercourse alteration is proposed, ensure compliance with the  
397    provisions in section **5.1.1**.
  
- 398                                   F.    Determine if the proposed development activity includes the placement of  
399    fill or excavation.
  
- 400                                   **G. Determine whether the proposed development activity complies with the no**  
401    **net loss standards in Section 6.0.**

**4.2.2 INFORMATION TO BE OBTAINED AND MAINTAINED**

The following information shall be obtained and maintained and shall be made available for public inspection as needed:

- 405                                   A.    The actual elevation (in relation to mean sea level) of the lowest floor  
406    (including basements) and all attendant utilities of all new or substantially  
407    improved structures where Base Flood Elevation (BFE) data is provided  
408    through the Flood Insurance Study (FIS), Flood Insurance Rate Map (FIRM),  
409    or obtained in accordance with section **5.1.7**.
  
- 410                                   B.    The elevation (in relation to mean sea level) of the natural grade of the  
411    building site for a structure prior to the start of construction and the  
412    placement of any fill and ensure that the requirements of sections **4.2.1(B),**  
413    **5.2.4, and 5.3.1(F)**, are adhered to.
  
- 414                                   C.    Upon placement of the lowest floor of a structure (including basement) but  
415    prior to further vertical construction, documentation, prepared and sealed  
416    by a professional licensed surveyor or engineer, certifying the elevation (in  
417    relation to mean sea level) of the lowest floor (including basement).
  
- 418                                   D.    Where base flood elevation data are utilized, As-built certification of the  
419    elevation (in relation to mean sea level) of the lowest floor (including  
420    basement) prepared and sealed by a professional licensed surveyor or  
421    engineer, prior to the final inspection.
  
- 422                                   E.    Maintain all Elevation Certificates (EC) submitted to the community.
  
- 423                                   F.    The elevation (in relation to mean sea level) to which the structure and all  
424    attendant utilities were floodproofed for all new or substantially improved  
425    floodproofed structures where allowed under this ordinance and where

426 Base Flood Elevation (BFE) data is provided through the FIS, FIRM, or  
427 obtained in accordance with section 5.1.7.

428 G. All floodproofing certificates required under this ordinance.

429 H. All variance actions, including justification for their issuance.

430 I. All hydrologic and hydraulic analyses performed as required under section  
431 5.2.4.

432 J. All Substantial Improvement and Substantial Damage calculations and  
433 determinations as required under section 4.2.4.

434 K. Documentation of how no net loss standards have been met (see Section  
435 6.0)

436 L. All records pertaining to the provisions of this ordinance.

437 **4.2.3 REQUIREMENT TO NOTIFY OTHER ENTITIES AND SUBMIT NEW TECHNICAL**  
438 **DATA**

439 **4.2.3.1 COMMUNITY BOUNDARY ALTERATIONS**

440 The Floodplain Administrator shall notify the Federal Insurance Administrator in  
441 writing whenever the boundaries of the community have been modified by  
442 annexation or the community has otherwise assumed authority or no longer has  
443 authority to adopt and enforce floodplain management regulations for a  
444 particular area, to ensure that all Flood Hazard Boundary Maps (FHBM) and  
445 Flood Insurance Rate Maps (FIRM) accurately represent the community's  
446 boundaries. Include within such notification a copy of a map of the community  
447 suitable for reproduction, clearly delineating the new corporate limits or new  
448 area for which the community has assumed or relinquished floodplain  
449 management regulatory authority.

450 **4.2.3.2 WATERCOURSE ALTERATIONS**

451 A. Notify adjacent communities, the Department of Land Conservation and  
452 Development, and other appropriate state and federal agencies, prior to  
453 any alteration or relocation of a watercourse, and submit evidence of  
454 such notification to the Federal Insurance Administration. This  
455 notification shall be provided by the applicant to the Federal Insurance  
456 Administration as a Letter of Map Revision (LOMR) along with either:

457 i. A proposed maintenance plan to assure the flood carrying  
458 capacity within the altered or relocated portion of the  
459 watercourse is maintained; or

460                   ii. Certification by a registered professional engineer that the  
461                   project has been designed to retain its flood carrying capacity  
462                   without periodic maintenance.

463                   B. The applicant shall be required to submit a Conditional Letter of Map  
464                   Revision (CLOMR) when required under section 4.2.3.3. Ensure  
465                   compliance with all applicable requirements in sections 4.2.3.3 and  
466                   5.1.1.

467                   **4.2.3.3 REQUIREMENT TO SUBMIT NEW TECHNICAL DATA**

468                   A. A community's base flood elevations may increase or decrease resulting  
469                   from physical changes affecting flooding conditions. As soon as  
470                   practicable, but not later than six months after the date such  
471                   information becomes available, a community shall notify the Federal  
472                   Insurance Administrator of the changes by submitting technical or  
473                   scientific data in accordance with Title 44 of the Code of Federal  
474                   Regulations (CFR), Section 65.3. The community may require the  
475                   applicant to submit such data and review fees required for compliance  
476                   with this section through the applicable FEMA Letter of Map Change  
477                   (LOMC) process.

478                   B. The Floodplain Administrator shall require a Conditional Letter of Map  
479                   Revision prior to the issuance of a floodplain development permit for:

480                   i. Proposed floodway encroachments that increase the base flood  
481                   elevation; and

482                   ii. Proposed development which increases the base flood elevation  
483                   by more than one foot in areas where FEMA has provided base  
484                   flood elevations but no floodway.

485                   C. An applicant shall notify FEMA within six (6) months of project  
486                   completion when an applicant has obtained a Conditional Letter of Map  
487                   Revision (CLOMR) from FEMA. This notification to FEMA shall be  
488                   provided as a Letter of Map Revision (LOMR).

489                   [Additional Recommended Language Provided in Appendix B](#)

490                   **4.2.4 SUBSTANTIAL IMPROVEMENT AND SUBSTANTIAL DAMAGE ASSESSMENTS**  
491                   **AND DETERMINATIONS**

492                   Conduct Substantial Improvement (SI) (as defined in section 2.0) reviews for all  
493                   structural development proposal applications and maintain a record of SI  
494                   calculations within permit files in accordance with section 4.2.2. Conduct  
495                   Substantial Damage (SD) (as defined in section 2.0) assessments when  
496                   structures are damaged due to a natural hazard event or other causes. Make SD  
497                   determinations whenever structures within the special flood hazard area (as  
498                   established in section 3.2) are damaged to the extent that the cost of restoring

499 the structure to its before damaged condition would equal or exceed 50 percent  
500 of the market value of the structure before the damage occurred.

501 **4.3 ESTABLISHMENT OF DEVELOPMENT PERMIT**

502 **4.3.1 FLOODPLAIN DEVELOPMENT PERMIT REQUIRED**

503 A development permit shall be obtained before construction or development  
504 begins within any area horizontally within the special flood hazard area  
505 established in section 3.2. The development permit shall be required for all  
506 structures, including manufactured dwellings, and for all other development, as  
507 defined in section 2.0, including fill and other development activities.

508 **4.3.2 APPLICATION FOR DEVELOPMENT PERMIT**

509 Application for a development permit may be made on forms furnished by the  
510 Floodplain Administrator and may include, but not be limited to, plans in  
511 duplicate drawn to scale showing the nature, location, dimensions, and  
512 elevations of the area in question; existing or proposed structures, fill, storage of  
513 materials, drainage facilities, and the location of the foregoing. Specifically, the  
514 following information is required:

- 515 A. In riverine flood zones, the proposed elevation (in relation to mean sea  
516 level), of the lowest floor (including basement) and all attendant utilities of  
517 all new and substantially improved structures; in accordance with the  
518 requirements of section 4.2.2.
- 519 B. In coastal flood zones (V zones and coastal A zones), the proposed elevation  
520 in relation to mean sea level of the bottom of the lowest structural member  
521 of the lowest floor (excluding pilings and columns) of all structures, and  
522 whether such structures contain a basement.
- 523 C. Proposed elevation in relation to mean sea level to which any non-  
524 residential structure will be floodproofed.
- 525 D. Certification by a registered professional engineer or architect licensed in  
526 the State of Oregon that the floodproofing methods proposed for any non-  
527 residential structure meet the floodproofing criteria for non-residential  
528 structures in section 5.2.3.3.
- 529 E. Description of the extent to which any watercourse will be altered or  
530 relocated.
- 531 F. Base Flood Elevation data for subdivision proposals or other development  
532 when required per sections 4.2.1 and 5.1.6.
- 533 G. Substantial improvement calculation for any improvement, addition,  
534 reconstruction, renovation, or rehabilitation of an existing structure.

535 H. The amount and location of any fill or excavation activities proposed.

536 **4.4 VARIANCE PROCEDURE**

537 The issuance of a variance is for floodplain management purposes only. Flood insurance  
538 premium rates are determined by federal statute according to actuarial risk and will not  
539 be modified by the granting of a variance.

540 **4.4.1 CONDITIONS FOR VARIANCES**

541 A. Generally, variances may be issued for new construction and substantial  
542 improvements to be erected on a lot of one-half acre or less in size  
543 contiguous to and surrounded by lots with existing structures constructed  
544 below the base flood level, in conformance with the provisions of sections  
545 **4.4.1 (C) and (E), and 4.4.2**. As the lot size increases beyond one-half acre,  
546 the technical justification required for issuing a variance increases.

547 B. Variances shall only be issued upon a determination that the variance is the  
548 minimum necessary, considering the flood hazard, to afford relief.

549 C. Variances shall not be issued within any floodway if any increase in flood  
550 levels during the base flood discharge would result.

551 D. Variances shall only be issued upon:

552 i. A showing of good and sufficient cause;

553 ii. A determination that failure to grant the variance would result in  
554 exceptional hardship to the applicant; and,

555 iii. A determination that the granting of a variance will not result in  
556 increased flood heights, additional threats to public safety,  
557 extraordinary public expense, create nuisances, cause fraud on or  
558 victimization of the public, or conflict with existing laws or  
559 ordinances.

560 E. Variances may be issued by a community for new construction and  
561 substantial improvements and for other development necessary for the  
562 conduct of a functionally dependent use provided that the criteria of section  
563 **4.4.1 (B) – (D)** are met, and the structure or other development is protected  
564 by methods that minimize flood damages during the base flood and create  
565 no additional threats to public safety.

566 F. **Variances shall not be issued unless it is demonstrated that the**  
567 **development will not result in net loss of the following proxies for the three**  
568 **floodplain functions in the SFHA: undeveloped space; pervious surface; or**  
569 **trees 6 inches dbh or greater (see Section 6.0 and associated options in**  
570 **Table 1).**

571 [Additional Optional Language Provided in Appendix B.](#)

572 **4.4.2 VARIANCE NOTIFICATION**

573 Any applicant to whom a variance is granted shall be given written notice that the  
574 issuance of a variance to construct a structure below the Base Flood Elevation  
575 will result in increased premium rates for flood insurance and that such  
576 construction below the base flood elevation increases risks to life and property.  
577 Such notification and a record of all variance actions, including justification for  
578 their issuance shall be maintained in accordance with section 4.2.2.

579 **5.0 PROVISIONS FOR FLOOD HAZARD REDUCTION**

580 **5.1 GENERAL STANDARDS**

581 In all special flood hazard areas, the **no net loss standards (see Section 6.0) and the**  
582 following standards shall be adhered to:

583 **5.1.1 ALTERATION OF WATERCOURSES**

584 Require that the flood carrying capacity within the altered or relocated portion of  
585 said watercourse is maintained. Require that maintenance is provided within the  
586 altered or relocated portion of said watercourse to ensure that the flood carrying  
587 capacity is not diminished. Require compliance with sections 4.2.3.2 and  
588 4.2.3.3.

589 **5.1.2 ANCHORING**

590 A. All new construction and substantial improvements shall be anchored to  
591 prevent flotation, collapse, or lateral movement of the structure resulting  
592 from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

593 B. All manufactured dwellings shall be anchored per section 5.2.3.4.

594 **5.1.3 CONSTRUCTION MATERIALS AND METHODS**

595 A. All new construction and substantial improvements shall be constructed  
596 with materials and utility equipment resistant to flood damage.

597 B. All new construction and substantial improvements shall be constructed  
598 using methods and practices that minimize flood damage.

599 **5.1.4 UTILITIES AND EQUIPMENT**

600 **5.1.4.1 WATER SUPPLY, SANITARY SEWER, AND ON-SITE WASTE**  
601 **DISPOSAL SYSTEMS**

602 A. All new and replacement water supply systems shall be designed to  
603 minimize or eliminate infiltration of flood waters into the system.

604 B. New and replacement sanitary sewage systems shall be designed to  
605 minimize or eliminate infiltration of flood waters into the systems and  
606 discharge from the systems into flood waters.

607 C. On-site waste disposal systems shall be located to avoid impairment to  
608 them or contamination from them during flooding consistent with the  
609 Oregon Department of Environmental Quality.

610 **5.1.4.2 ELECTRICAL, MECHANICAL, PLUMBING, AND OTHER**  
611 **EQUIPMENT**

612 Electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and  
613 other equipment and service facilities shall be elevated at or above the base  
614 flood level (ANY COMMUNITY FREEBOARD REQUIREMENT) or shall be designed  
615 and installed to prevent water from entering or accumulating within the  
616 components and to resist hydrostatic and hydrodynamic loads and stresses,  
617 including the effects of buoyancy, during conditions of flooding. In addition,  
618 electrical, heating, ventilating, air- conditioning, plumbing, duct systems, and  
619 other equipment and service facilities shall:

620 A. If replaced as part of a substantial improvement shall meet all the  
621 requirements of this section.

622 B. Not be mounted on or penetrate through breakaway walls.

623 **5.1.5 TANKS**

624 A. Underground tanks shall be anchored to prevent flotation, collapse and  
625 lateral movement under conditions of the base flood.

626 B. Above-ground tanks shall be installed at or above the base flood level  
627 (COMMUNITY FREEBOARD REQUIREMENT) or shall be anchored to prevent  
628 flotation, collapse, and lateral movement under conditions of the base flood.

629 C. In coastal flood zones (V Zones or coastal A Zones) when elevated on  
630 platforms, the platforms shall be cantilevered from or knee braced to the  
631 building or shall be supported on foundations that conform to the  
632 requirements of the State of Oregon Specialty Code.

633 **5.1.6 SUBDIVISION PROPOSALS AND OTHER PROPOSED DEVELOPMENTS**

634 A. All new subdivision proposals and other proposed new developments  
635 (including proposals for manufactured dwelling parks and subdivisions)  
636 greater than 50 lots or 5 acres, whichever is the lesser, shall include within  
637 such proposals Base Flood Elevation data.

638 B. All new subdivision proposals and other proposed new developments  
639 (including proposals for manufactured dwelling parks and subdivisions)  
640 shall:

641 i. Be consistent with the need to minimize flood damage.

642 ii. Have public utilities and facilities such as sewer, gas, electrical, and  
643 water systems located and constructed to minimize or eliminate  
644 flood damage.

645 iii. Have adequate drainage provided to reduce exposure to flood  
646 hazards.

647 iv. Comply with no net loss standards in section 6.0.

648 **5.1.7 USE OF OTHER BASE FLOOD ELEVATION DATA**

649 A. When Base Flood Elevation data has not been provided in accordance with  
650 section 3.2 the local floodplain administrator shall obtain, review, and  
651 reasonably utilize any Base Flood Elevation data available from a federal,  
652 state, or other source, in order to administer section 5.0. All new subdivision  
653 proposals and other proposed new developments (including proposals for  
654 manufactured dwelling parks and subdivisions) must meet the requirements  
655 of section 5.1.6.

656 B. Base Flood Elevations shall be determined for development proposals that  
657 are 5 acres or more in size or are 50 lots or more, whichever is lesser in any  
658 A zone that does not have an established base flood elevation.  
659 Development proposals located within a riverine unnumbered A Zone shall  
660 be reasonably safe from flooding; the test of reasonableness includes use of  
661 historical data, high water marks, FEMA provided Base Level Engineering  
662 data, and photographs of past flooding, etc... where available. (REFERENCE  
663 TO ANY OF THIS TYPE OF INFORMATION TO BE USED FOR REGULATORY  
664 PURPOSES BY YOUR COMMUNITY, I.E. BASE LEVEL ENGINEERING DATA,  
665 HIGH WATER MARKS, HISTORICAL OR OTHER DATA THAT WILL BE  
666 REGULATED TO. THIS MAY BE NECESSARY TO ENSURE THAT THE  
667 STANDARDS APPLIED TO RESIDENTIAL STRUCTURES ARE CLEAR AND  
668 OBJECTIVE. IF UNCERTAIN SEEK LEGAL ADVICE, AT A MINIMUM REQUIRE  
669 THE ELEVATION OF RESIDENTIAL STRUCTURES AND NON-RESIDENTIAL  
670 STRUCTURES THAT ARE NOT DRY FLOODPROOFED TO BE 2 FEET ABOVE  
671 HIGHEST ADJACENT GRADE). Failure to elevate at least two feet above  
672 grade in these zones may result in higher insurance rates.

673 **5.1.8 STRUCTURES LOCATED IN MULTIPLE OR PARTIAL FLOOD ZONES**

674 In coordination with the State of Oregon Specialty Codes:

- 675 A. When a structure is located in multiple flood zones on the community's  
676 Flood Insurance Rate Maps (FIRM) the provisions for the more restrictive  
677 flood zone shall apply.
  
- 678 B. When a structure is partially located in a special flood hazard area, the  
679 entire structure shall meet the requirements for new construction and  
680 substantial improvements.

681 [Additional Recommended Language Provided in Appendix B.](#)

682 **5.2 SPECIFIC STANDARDS FOR RIVERINE (INCLUDING ALL NON-COASTAL) FLOOD**  
683 **ZONES**

684 These specific standards shall apply to all new construction and substantial  
685 improvements in addition to the General Standards contained in section 5.1 of this  
686 ordinance **and the no net loss standards (see Section 6.0).**

687 **5.2.1 FLOOD OPENINGS**

688 All new construction and substantial improvements with fully enclosed areas  
689 below the lowest floor (excluding basements) are subject to the following  
690 requirements. Enclosed areas below the Base Flood Elevation, including crawl  
691 spaces shall:

- 692 A. Be designed to automatically equalize hydrostatic flood forces on walls by  
693 allowing for the entry and exit of floodwaters;
  
- 694 B. Be used solely for parking, storage, or building access;
  
- 695 C. Be certified by a registered professional engineer or architect or meet or  
696 exceed all of the following minimum criteria:
  - 697 i. A minimum of two openings;
  
  - 698 ii. The total net area of non-engineered openings shall be not less than  
699 one square inch for each square foot of enclosed area, where the  
700 enclosed area is measured on the exterior of the enclosure walls;
  
  - 701 iii. The bottom of all openings shall be no higher than one foot above  
702 grade;
  
  - 703 iv. Openings may be equipped with screens, louvers, valves, or other  
704 coverings or devices provided that they shall allow the automatic  
705 flow of floodwater into and out of the enclosed areas and shall be  
706 accounted for in the determination of the net open area; and,
  
  - 707 v. All additional higher standards for flood openings in the State of  
708 Oregon Residential Specialty Codes Section R322.2.2 shall be  
709 complied with when applicable.

710 **5.2.2 GARAGES**

- 711 A. Attached garages may be constructed with the garage floor slab below the  
712 Base Flood Elevation (BFE) in riverine flood zones, if the following  
713 requirements are met:
- 714 i. If located within a floodway the proposed garage must comply with  
715 the requirements of section 5.2.4;
  - 716 ii. The floors are at or above grade on not less than one side;
  - 717 iii. The garage is used solely for parking, building access, and/or  
718 storage;
  - 719 iv. The garage is constructed with flood openings in compliance with  
720 section 5.2.1 to equalize hydrostatic flood forces on exterior walls by  
721 allowing for the automatic entry and exit of floodwater;
  - 722 v. The portions of the garage constructed below the BFE are  
723 constructed with materials resistant to flood damage;
  - 724 vi. The garage is constructed in compliance with the standards in  
725 section 5.1; and,
  - 726 vii. The garage is constructed with electrical, and other service facilities  
727 located and installed so as to prevent water from entering or  
728 accumulating within the components during conditions of the base  
729 flood.
- 730 B. Detached garages must be constructed in compliance with the standards  
731 for appurtenant structures in section 5.2.3.6 or non-residential structures in  
732 section 5.2.3.3 depending on the square footage of the garage.

733 **5.2.3 FOR RIVERINE (NON-COASTAL) SPECIAL FLOOD HAZARD AREAS WITH**  
734 **BASE FLOOD ELEVATIONS**

735 In addition to the general standards listed in section 5.1 the following specific  
736 standards shall apply in Riverine (non-coastal) special flood hazard areas with  
737 Base Flood Elevations (BFE): Zones A1-A30, AH, and AE.

738 **5.2.3.1 BEFORE REGULATORY FLOODWAY**

739 In areas where a regulatory floodway has not been designated, no new  
740 construction, substantial improvement, or other development (including fill)  
741 shall be permitted within Zones A1-30 and AE on the community's Flood  
742 Insurance Rate Map (FIRM), unless it is demonstrated that the cumulative effect  
743 of the proposed development, when combined with all other existing and  
744 anticipated development, will not increase the water surface elevation of the  
745 base flood more than one foot at any point within the community and will not

746 result in the net loss of flood storage volume. When determined that structural  
747 elevation is not possible and where the placement of fill cannot meet the above  
748 standard, impacts to undeveloped space must adhere to the no net loss  
749 standards in section 6.1.C.

750 **5.2.3.2 RESIDENTIAL CONSTRUCTION**

- 751 A. New construction, conversion to, and substantial improvement of any  
752 residential structure shall have the lowest floor, including basement,  
753 elevated at or above the Base Flood Elevation (BFE) (ADDITIONAL  
754 FREEBOARD FOR YOUR COMMUNITY – RECOMMEND MINIMUM OF 1FT  
755 ABOVE BFE).
- 756 B. Enclosed areas below the lowest floor shall comply with the flood  
757 opening requirements in section 5.2.1.

758 **5.2.3.3 NON-RESIDENTIAL CONSTRUCTION**

- 759 A. New construction, conversion to, and substantial improvement of any  
760 commercial, industrial, or other non-residential structure shall:
- 761 i. Have the lowest floor, including basement elevated at or above  
762 the Base Flood Elevation (BFE) (ANY ADDITIONAL FREEBOARD  
763 REQUIREMENTS FOR YOUR COMMUNITY); or
- 764 ii. Together with attendant utility and sanitary facilities:
- 765 a. Be floodproofed so that below the base flood level the  
766 structure is watertight with walls substantially  
767 impermeable to the passage of water;
- 768 b. Have structural components capable of resisting  
769 hydrostatic and hydrodynamic loads and effects of  
770 buoyancy; and,
- 771 c. Be certified by a registered professional engineer or  
772 architect that the design and methods of construction  
773 are in accordance with accepted standards of practice  
774 for meeting provisions of this section based on their  
775 development and/or review of the structural design,  
776 specifications and plans. Such certifications shall be  
777 provided to the Floodplain Administrator as set forth  
778 section 4.2.2.
- 779 B. Non-residential structures that are elevated, not floodproofed, shall  
780 comply with the standards for enclosed areas below the lowest floor in  
781 section 5.2.1.

- 782 C. Applicants floodproofing non-residential buildings shall be notified that
- 783 flood insurance premiums will be based on rates that are one (1) foot
- 784 below the floodproofed level (e.g. a building floodproofed to the base
- 785 flood level will be rated as one (1) foot below.

**5.2.3.4 MANUFACTURED DWELLINGS**

- 786
- 787 A. Manufactured dwellings to be placed (new or replacement) or
- 788 substantially improved that are supported on solid foundation walls
- 789 shall be constructed with flood openings that comply with section 5.2.1;
- 790 B. The bottom of the longitudinal chassis frame beam shall be at or above
- 791 Base Flood Elevation;
- 792 C. Manufactured dwellings to be placed (new or replacement) or
- 793 substantially improved shall be anchored to prevent flotation, collapse,
- 794 and lateral movement during the base flood. Anchoring methods may
- 795 include, but are not limited to, use of over-the-top or frame ties to
- 796 ground anchors (Reference FEMA’s “Manufactured Home Installation in
- 797 Flood Hazard Areas” guidebook for additional techniques), and;
- 798 D. Electrical crossover connections shall be a minimum of twelve (12)
- 799 inches above Base Flood Elevation (BFE).

**5.2.3.5 RECREATIONAL VEHICLES**

Recreational vehicles placed on sites are required to:

- 800
- 801
- 802 A. Be on the site for fewer than 180 consecutive days, and
- 803 B. Be fully licensed and ready for highway use, on its wheels or jacking
- 804 system, is attached to the site only by quick disconnect type utilities and
- 805 security devices, and has no permanently attached additions; or
- 806 C. Meet the requirements of section 5.2.3.4, including the anchoring and
- 807 elevation requirements for manufactured dwellings.

**5.2.3.6 APPURTENANT (ACCESSORY) STRUCTURES**

Relief from elevation or floodproofing requirements for residential and non-residential structures in Riverine (Non-Coastal) flood zones may be granted for appurtenant structures that meet the following requirements:

- 812 A. Appurtenant structures located partially or entirely within the floodway
- 813 must comply with requirements for development within a floodway
- 814 found in section 5.2.4;
- 815 B. Appurtenant structures must only be used for parking, access, and/or
- 816 storage and shall not be used for human habitation;

- 817 C. In compliance with State of Oregon Specialty Codes, appurtenant  
818 structures on properties that are zoned residential are limited to one-  
819 story structures less than 200 square feet, or 400 square feet if the  
820 property is greater than two (2) acres in area and the proposed  
821 appurtenant structure will be located a minimum of 20 feet from all  
822 property lines. Appurtenant structures on properties that are zoned as  
823 non-residential are limited in size to 120 square feet;
  
- 824 D. The portions of the appurtenant structure located below the Base Flood  
825 Elevation must be built using flood resistant materials;
  
- 826 E. The appurtenant structure must be adequately anchored to prevent  
827 flotation, collapse, and lateral movement of the structure resulting from  
828 hydrodynamic and hydrostatic loads, including the effects of buoyancy,  
829 during conditions of the base flood;
  
- 830 F. The appurtenant structure must be designed and constructed to  
831 equalize hydrostatic flood forces on exterior walls and comply with the  
832 requirements for flood openings in section 5.2.1;
  
- 833 G. Appurtenant structures shall be located and constructed to have low  
834 damage potential;
  
- 835 H. Appurtenant structures shall not be used to store toxic material, oil, or  
836 gasoline, or any priority persistent pollutant identified by the Oregon  
837 Department of Environmental Quality unless confined in a tank installed  
838 in compliance with section 5.1.5; and,
  
- 839 I. Appurtenant structures shall be constructed with electrical, mechanical,  
840 and other service facilities located and installed so as to prevent water  
841 from entering or accumulating within the components during conditions  
842 of the base flood.

843 **5.2.4 FLOODWAYS**

844 Located within the special flood hazard areas established in section 3.2 are  
845 areas designated as floodways. Since the floodway is an extremely hazardous  
846 area due to the velocity of the floodwaters which carry debris, potential  
847 projectiles, and erosion potential, the following provisions apply:

- 848 A. Prohibit encroachments, including fill, new construction, substantial  
849 improvements, and other development within the adopted regulatory  
850 floodway unless:
  - 851 i. Certification by a registered professional civil engineer is provided  
852 demonstrating through hydrologic and hydraulic analyses performed  
853 in accordance with standard engineering practice that the proposed  
854 encroachment shall not result in any increase in flood levels within  
855 the community during the occurrence of the base flood discharge; or

856 ii. A community may permit encroachments within the adopted  
857 regulatory floodway that would result in an increase in base flood  
858 elevations, provided that conditional approval has been obtained by  
859 the Federal Insurance Administrator through the Conditional Letter  
860 of Map Revision (CLOMR) application process, all requirements  
861 established under 44 CFR 65.12 are fulfilled, and the  
862 encroachment(s) comply with the no net loss standards in section  
863 6.0.

864 B. If the requirements of section 5.2.4 (A) are satisfied, all new construction,  
865 substantial improvements, and other development shall comply with all  
866 other applicable flood hazard reduction provisions of section 5.0 and 6.0.

867 **5.2.5 STANDARDS FOR SHALLOW FLOODING AREAS**

868 Shallow flooding areas appear on FIRMs as AO zones with depth designations or  
869 as AH zones with Base Flood Elevations. For AO zones the base flood depths  
870 range from one (1) to three (3) feet above ground where a clearly defined  
871 channel does not exist, or where the path of flooding is unpredictable and where  
872 velocity flow may be evident. Such flooding is usually characterized as sheet flow.  
873 For both AO and AH zones, adequate drainage paths are required around  
874 structures on slopes to guide floodwaters around and away from proposed  
875 structures.

876 **5.2.5.1 STANDARDS FOR AH ZONES**

877 Development within AH Zones must comply with the standards in sections 5.1,  
878 5.2, and 5.2.5.

879 **5.2.5.2 STANDARDS FOR AO ZONES**

880 In AO zones, the following provisions apply in addition to the requirements in  
881 sections 5.1 and 5.2.5:

882 A. New construction, conversion to, and substantial improvement of  
883 residential structures and manufactured dwellings within AO zones shall  
884 have the lowest floor, including basement, elevated above the highest  
885 grade adjacent to the building, at minimum to or above the depth  
886 number specified on the Flood Insurance Rate Maps (FIRM)  
887 (COMMUNITY FREEBOARD REQUIREMENT) (at least two (2) feet if no  
888 depth number is specified). For manufactured dwellings the lowest floor  
889 is considered to be the bottom of the longitudinal chassis frame beam.

890 B. New construction, conversion to, and substantial improvements of non-  
891 residential structures within AO zones shall either:

892 i. Have the lowest floor (including basement) elevated above the  
893 highest adjacent grade of the building site, at minimum to or  
894 above the depth number specified on the Flood Insurance Rate

- 895 Maps (FIRMS) (**COMMUNITY FREE BOARD REQUIREMENT**) (at  
896 least two (2) feet if no depth number is specified); or
- 897 ii. Together with attendant utility and sanitary facilities, be  
898 completely floodproofed to or above the depth number specified  
899 on the FIRM (**COMMUNITY FREEBOARD REQUIREMENT**) or a  
900 minimum of two (2) feet above the highest adjacent grade if no  
901 depth number is specified, so that any space below that level is  
902 watertight with walls substantially impermeable to the passage  
903 of water and with structural components having the capability of  
904 resisting hydrostatic and hydrodynamic loads and the effects of  
905 buoyancy. If this method is used, compliance shall be certified  
906 by a registered professional engineer or architect as stated in  
907 section **5.2.3.3(A)(4)**.
- 908 C. Recreational vehicles placed on sites within AO Zones on the  
909 community's Flood Insurance Rate Maps (FIRM) shall either:
- 910 i. Be on the site for fewer than 180 consecutive days, and
- 911 ii. Be fully licensed and ready for highway use, on its wheels or  
912 jacking system, is attached to the site only by quick disconnect  
913 type utilities and security devices, and has no permanently  
914 attached additions; or
- 915 iii. Meet the elevation requirements of section **5.2.5.2(A)**, and the  
916 anchoring and other requirements for manufactured dwellings of  
917 section **5.2.3.4**.
- 918 D. In AO zones, new and substantially improved appurtenant structures  
919 must comply with the standards in section **5.2.3.6**.
- 920 E. In AO zones, enclosed areas beneath elevated structures shall comply  
921 with the requirements in section **5.2.1**.

922 **5.3 SPECIFIC STANDARDS FOR COASTAL HIGH HAZARD FLOOD ZONES**

923 Located within special flood hazard areas established in section **3.2** are Coastal High  
924 Hazard Areas, designated as Zones V1-V30, VE, V, or coastal A zones as identified on the  
925 FIRMs as the area between the Limit of Moderate Wave Action (LiMWA) and the Zone V  
926 boundary. These areas have special flood hazards associated with high velocity waters  
927 from surges and, therefore, in addition to meeting all provisions of this ordinance and the  
928 State of Oregon Specialty Codes, the following provisions shall apply in addition to the  
929 general standards provisions in section **5.1**.

930 **5.3.1 DEVELOPMENT STANDARDS**

931 A. All new construction and substantial improvements in Zones V1-V30 and VE,  
932 V, and coastal A zones (where base flood elevation data is available) shall  
933 be elevated on pilings and columns such that:

934 i. The bottom of the lowest horizontal structural member of the lowest  
935 floor (excluding the pilings or columns) is elevated a minimum of  
936 one foot above the base flood level; and

937 ii. The pile or column foundation and structure attached thereto is  
938 anchored to resist flotation, collapse and lateral movement due to  
939 the effects of wind and water loads acting simultaneously on all  
940 building components. Water loading values used shall be those  
941 associated with the base flood. Wind loading values used shall be  
942 those specified by the State of Oregon Specialty Codes;

943 B. A registered professional engineer or architect shall develop or review the  
944 structural design, specifications and plans for the construction, and shall  
945 certify that the design and methods of construction to be used are in  
946 accordance with accepted standards of practice for meeting the provisions  
947 of this section.

948 C. Obtain the elevation (in relation to mean sea level) of the bottom of the  
949 lowest horizontal structural member of the lowest floor (excluding pilings  
950 and columns) of all new and substantially improved structures and whether  
951 or not such structures contain a basement. The floodplain administrator  
952 shall maintain a record of all such information in accordance with section  
953 **4.2.2.**

954 D. Provide that all new construction and substantial improvements have the  
955 space below the lowest floor either free of obstruction or constructed with  
956 non- supporting breakaway walls, open wood lattice-work, or insect  
957 screening intended to collapse under wind and water loads without causing  
958 collapse, displacement, or other structural damage to the elevated portion  
959 of the building or supporting foundation system.

960 For the purpose of this section, a breakaway wall shall have a design safe  
961 loading resistance of not less than 10 and no more than 20 pounds per  
962 square foot. Use of breakaway walls which exceed a design safe loading  
963 resistance of 20 pounds per square foot (either by design or when so  
964 required by local or state codes) may be permitted only if a registered  
965 professional engineer or architect certifies that the designs proposed meet  
966 the following conditions:

967 i. Breakaway wall collapse shall result from water load less than that  
968 which would occur during the base flood; and

969                   ii. Such enclosed space created by breakaway walls shall be useable  
970                   solely for parking of vehicles, building access, or storage. Such  
971                   space shall not be used for human habitation.

972                   iii. Walls intended to break away under flood loads shall have flood  
973                   openings that meet or exceed the criteria for flood openings in  
974                   section **5.2.1**.

975                   E. The elevated portion of the building and supporting foundation system shall  
976                   not be subject to collapse, displacement, or other structural damage due to  
977                   the effects of wind and water loads acting simultaneously on all building  
978                   components (structural and nonstructural). Maximum water loading values  
979                   to be used in this determination shall be those associated with the base  
980                   flood. Maximum wind loading values used shall be those specified by the  
981                   State of Oregon Specialty Codes.

982                   F. Prohibit the use of fill for structural support of buildings.

983                   G. All new construction shall be located landward of the reach of mean high  
984                   tide.

985                   H. Prohibit man-made alteration of sand dunes which would increase potential  
986                   flood damage.

987                   I. All structures, including but not limited to residential structures, non-  
988                   residential structures, appurtenant structures, and attached garages shall  
989                   comply with all the requirements of section **5.3.1** Floodproofing of non-  
990                   residential structures is prohibited.

991                   **5.3.1.1 MANUFACTURED DWELLING STANDARDS FOR COASTAL HIGH**  
992                   **HAZARD ZONES**

993                   All manufactured dwellings to be placed (new or replacement) or substantially  
994                   improved within Coastal High Hazard Areas (Zones V, V1-30, VE, or Coastal A)  
995                   shall meet the following requirements:

996                   A. Comply with all of the standards within section **5.3**

997                   B. The bottom of the longitudinal chassis frame beam shall be elevated to  
998                   a minimum of one foot above the Base Flood Elevation (BFE); and

999                   C. Electrical crossover connections shall be a minimum of 12 inches above  
1000                   the BFE.

1001                   **5.3.1.2 RECREATIONAL VEHICLE STANDARDS FOR COASTAL HIGH**  
1002                   **HAZARD ZONES**

1003                   Recreational Vehicles within Coastal High Hazard Areas (Zones V, V1-30, VE, or  
1004                   Coastal A) shall either:

- 1005 A. Be on the site for fewer than 180 consecutive days, and
- 1006 B. Be fully licensed and ready for highway use, on wheels or jacking
- 1007 system, is attached to the site only by quick disconnect type utilities and
- 1008 security devices, and has no permanently attached additions.

**5.3.1.3 TANK STANDARDS FOR COASTAL HIGH HAZARD ZONES**

Tanks shall meet the requirements of section 5.1.5 and 6.0.

**6.0 STANDARDS FOR PROTECTION OF SFHA FLOODPLAIN FUNCTIONS**

The standards described below apply to all special flood hazard areas as defined in Section 2.0.

**6.1 NO NET LOSS STANDARDS**

A. No net loss of the three proxies for the floodplain functions mentioned in Section 1 is required for development in the special flood hazard area that would reduce undeveloped space, increase impervious surface, or result in a loss of trees that are 6-inches dbh or greater. No net loss can be achieved by first avoiding negative effects to floodplain functions to the degree possible, then minimizing remaining effects, then replacing and/or otherwise compensating for, offsetting, or rectifying the residual adverse effects to the three floodplain functions. Prior to the issuance of any development authorization, the applicant shall:

- i. Demonstrate a legal right by the project proponent to implement the proposed activities to achieve no net loss (e.g., property owner agreement);
- ii. Demonstrate that financial assurances are in place for the long-term maintenance and monitoring of all projects to achieve no net loss;
- iii. Include a management plan that identifies the responsible site manager, stipulates what activities are allowed on site, and requires the posting of signage identifying the site as a mitigation area.

B. Compliance with no net loss for undeveloped space or impervious surface is preferred to occur prior to the loss of habitat function but, at a minimum, shall occur concurrent with the loss. To offset the impacts of delay in implementing no net loss, a 25 percent increase in the required minimum area is added for each year no net loss implementation is delayed.

C. No net loss must be provided within, in order of preference: 1) the lot or parcel that floodplain functions were removed from, 2) the same reach of the waterbody where the development is proposed, or 3) the special flood hazard area within the same hydrologically connected area as the proposed development. Table 1 presents the no net loss ratios, which increase based on the preferences listed above.

1040 **6.1.1 UNDEVELOPED SPACE**

1041 A. Development proposals shall not reduce the fish-accessible and egress-able  
1042 undeveloped space within the special flood hazard area.

1043 B. A development proposal with an activity that would impact undeveloped  
1044 space shall achieve no net loss of fish-accessible and egress-able space.

1045 C. Lost undeveloped space must be replaced with fish-accessible and egress-  
1046 able compensatory volume based on the ratio in Table 1 and at the same  
1047 flood level at which the development causes an impact (i.e., plus or minus 1  
1048 foot of the hydraulically equivalent elevation).

1049 i. Hydraulically equivalent sites must be found within either the  
1050 equivalent 1-foot elevations or the same flood elevation bands of  
1051 the development proposal. The flood elevation bands are identified  
1052 as follows:

1053 (1) Ordinary High Water Mark to 10-year,

1054 (2) 10-year to 25-year,

1055 (3) 25-year to 50-year,

1056 (4) And 50-year to 100-year

1057 ii. Hydrologically connected to the waterbody that is the flooding source;

1058 iii. Designed so that there is no increase in velocity; and

1059 iv. Designed to fill and drain in a manner that minimizes anadromous  
1060 fish stranding to the greatest extent possible.

1061 **6.1.2 IMPERVIOUS SURFACES**

1062 Impervious surface mitigation shall be mitigated through any of the following  
1063 options:

1064 A. Development proposals shall not result in a net increase in impervious  
1065 surface area within the SFHA, or

1066 B. use low impact development or green infrastructure to infiltrate and treat  
1067 stormwater produced by the new impervious surface, as documented by a  
1068 qualified professional, or

1069 C. If prior methods are not feasible and documented by a qualified  
1070 professional stormwater retention is required to ensure no increase in peak  
1071 volume or flow and to maximize infiltration, and treatment is required to

1072 minimize pollutant loading. See section 6.2.C for stormwater retention  
1073 specifications.

1074 **6.1.3 TREES**

1075 A. Development proposals shall result in no net loss of trees 6-inches dbh or  
1076 greater within the special flood hazard area. This requirement does not  
1077 apply to silviculture where there is no development.

1078 i. Trees of or exceeding 6-inches dbh that are removed from the RBZ,  
1079 Floodway, or RBZ-fringe must be replaced at the ratios in Table 1.

1080 ii. Replacement trees must be native species that would occur naturally  
1081 in the Level III ecoregion of the impact area.

1082 **6.2 STORMWATER MANAGEMENT**

1083 Any development proposal that cannot mitigate as specified in 6.1.2(A)-(B) must include  
1084 the following:

1085 A. Water quality (pollution reduction) treatment for post-construction  
1086 stormwater runoff from any net increase in impervious area; and

1087 B. Water quantity treatment (retention facilities) unless the outfall discharges  
1088 into the ocean.

1089 C. Retention facilities must:

1090 i. Limit discharge to match the pre-development peak discharge rate  
1091 (i.e., the discharge rate of the site based on its natural groundcover  
1092 and grade before any development occurred) for the 10-year peak  
1093 flow using a continuous simulation for flows between 50 percent of  
1094 the 2-year event and the 10-year flow event (annual series).

1095 ii. Treat stormwater to remove sediment and pollutants from impervious  
1096 surfaces such that at least 80 percent of the suspended solids are  
1097 removed from the stormwater prior to discharging to the receiving  
1098 water body.

1099 iii. Be designed to not entrap fish and drain to the source of flooding.

1100 iv. Be certified by a qualified professional.

1101 D. Stormwater treatment practices for multi-parcel facilities, including  
1102 subdivisions, shall have an enforceable operation and maintenance  
1103 agreement to ensure the system functions as designed. This agreement will  
1104 include:

- 1105 i. Access to stormwater treatment facilities at the site by the  
1106 **COMMUNITY TYPE (e.g., city, county)** for the purpose of inspection  
1107 and repair.
- 1108 ii. A legally binding document specifying the parties responsible for the  
1109 proper maintenance of the stormwater treatment facilities. The  
1110 agreement will be recorded and bind subsequent purchasers and  
1111 sellers even if they were not party to the original agreement.
- 1112 iii. For stormwater controls that include vegetation and/or soil  
1113 permeability, the operation and maintenance manual must include  
1114 maintenance of these elements to maintain the functionality of the  
1115 feature.
- 1116 iv. The responsible party for the operation and maintenance of the  
1117 stormwater facility shall have the operation and maintenance  
1118 manual on site and available at all times. Records of the  
1119 maintenance and repairs shall be retained and made available for  
1120 inspection by the **COMMUNITY TYPE (e.g., city, county)** for five years

1121 **6.3 ACTIVITIES EXEMPT FROM NO NET LOSS STANDARDS**

1122 The following activities are not subject to the no net loss standards in Section 6.1;  
1123 however, they may not be exempt from floodplain development permit requirements.

1124 A. Normal maintenance of structures, such as re-roofing and replacing siding,  
1125 provided there is no change in the footprint or expansion of the roof of the  
1126 structure;

1127 B. Normal street, sidewalk, and road maintenance, including filling potholes,  
1128 repaving, and installing signs and traffic signals, that does not alter  
1129 contours, use, or alter culverts. Activities exempt do not include expansion  
1130 of paved areas;

1131 C. Routine maintenance of landscaping that does not involve grading,  
1132 excavation, or filling;

1133 D. Routine agricultural practices such as tilling, plowing, harvesting, soil  
1134 amendments, and ditch cleaning that does not alter the ditch configuration  
1135 provided the spoils are removed from special flood hazard area or tilled into  
1136 fields as a soil amendment;

1137 E. Routine silviculture practices that do not meet the definition of  
1138 development, including harvesting of trees as long as root balls are left in  
1139 place and forest road construction or maintenance that does not alter  
1140 contours, use, or alter culverts;

1141 F. Removal of noxious weeds and hazard trees, and replacement of non-native  
1142 vegetation with native vegetation;

- 1143 G. Normal maintenance of above ground utilities and facilities, such as
- 1144 replacing downed power lines and utility poles provided there is no net
- 1145 change in footprint;
  
- 1146 H. Normal maintenance of a levee or other flood control facility prescribed in
- 1147 the operations and maintenance plan for the levee or flood control facility.
- 1148 Normal maintenance does not include repair from flood damage, expansion
- 1149 of the prism, expansion of the face or toe or addition of protection on the
- 1150 face or toe with rock armor.
  
- 1151 I. Habitat restoration activities.

**6.4 RIPARIAN BUFFER ZONE (RBZ)**

- 1153 A. The Riparian Buffer Zone is measured from the ordinary high-water line of a
- 1154 fresh waterbody (lake; pond; ephemeral, intermittent, or perennial stream)
- 1155 or mean higher-high water of a marine shoreline or tidally influenced river
- 1156 reach to 170 feet horizontally on each side of the stream or inland of the
- 1157 MHHW. The riparian buffer zone includes the area between these outer
- 1158 boundaries on each side of the stream, including the stream channel.
  
- 1159 B. Habitat restoration activities in the RBZ are considered self-mitigating and
- 1160 are not subject to the no net loss standards described above.
  
- 1161 C. Functionally dependent uses are only subject to the no net loss standards for
- 1162 development in the RBZ. Ancillary features that are associated with but do
- 1163 not directly impact the functionally dependent use in the RBZ (including
- 1164 manufacturing support facilities and restrooms) are subject to the beneficial
- 1165 gain standard in addition to no net loss standards.
  
- 1166 D. Any other use of the RBZ requires a greater offset to achieve no net loss of
- 1167 floodplain functions, on top of the no net loss standards described above,
- 1168 through the beneficial gain standard.
  
- 1169 E. Under FEMA's beneficial gain standard, an area within the same reach of
- 1170 the project and equivalent to 5% of the total project area within the RBZ
- 1171 shall be planted with native herbaceous and shrub vegetation and
- 1172 designated as open space.
- 1173

1174 **Table 1 No Net Loss Standards**

| <b>Basic Mitigate Ratios</b> | <b>Undeveloped Space (ft<sup>3</sup>)</b> | <b>Impervious Surface (ft<sup>2</sup>)</b> | <b>Trees (6" &lt; dbh ≤ 20")</b> | <b>Trees (20" &lt; dbh ≤ 39")</b> | <b>Trees (39" &lt; dbh)</b> |
|------------------------------|---|--|----------------------------------|-----------------------------------|-----------------------------|
| <b>RBZ and Floodway</b>      | 2:1*                                      | 1:1  | 3:1*                             | 5:1                               | 6:1                         |
| <b>RBZ-Fringe</b>            | 1.5:1*                                    | 1:1  | 2:1*                             | 4:1                               | 5:1                         |
|                              |   |  |                                  |                                   |                             |

| <b>Mitigation multipliers</b>  |        |       |       |      |      |
|--|--------|-------|-------|------|------|
| <b>Mitigation onsite to Mitigation offsite, same reach</b>   | 100%   | 100%  | 100%  | 100% | 100% |
| <b>Mitigation onsite to Mitigation offsite, different reach, same watershed (5<sup>th</sup> field)</b> | 200% * | 200%* | 200%* | 200% | 200% |

1175 Notes:

- 1176 1. Ratios with asterisks are indicated in the BiOp
- 1177 2. Mitigation multipliers of 100% result in the required mitigation occurring at the same value
- 1178 described by the ratios above, while multipliers of 200% result in the required mitigation
- 1179 being doubled.
- 1180 a. For example, if only 500 ft<sup>2</sup> of the total 1000 ft<sup>2</sup> of required pervious surface
- 1181 mitigation can be conducted onsite and in the same reach, the remaining 500 ft<sup>2</sup> of
- 1182 required pervious surface mitigation occurring offsite at a different reach would
- 1183 double because of the 200% multiplier.
- 1184 3. RBZ impacts must be offset in the RBZ, on-site or off-site.
- 1185 4. Additional standards may apply in the RBZ (See 6.4 Riparian Buffer Zone)



**FEMA**

July 15, 2024

Ms. Teri Lenahan  
City Hall  
31360 NW Commercial Street  
North Plains, Oregon 97133

Dear Ms. Teri Lenahan:

The purpose of this letter is to announce the start of the United States Department of Homeland Security's Federal Emergency Management Agency's (FEMA) Pre-Implementation Compliance Measures (PICM) for National Flood Insurance Program (NFIP) participating communities in Oregon. The intent of PICM is to ensure the continued existence of threatened or endangered species in compliance with the Endangered Species Act (ESA). These measures include coordination with communities to provide appropriate technical assistance, help identify available resources, deliver trainings, and facilitate workshops to ensure on-going community participation in the NFIP. These pre-implementation compliance measures will assist communities in preparing for the Final NFIP-ESA Implementation Plan by helping them develop short and long-term solutions to ensure their on-going participation in the NFIP.

FEMA is currently conducting a National Environmental Policy Act (NEPA) evaluation of impacts associated with the Oregon NFIP-ESA Implementation Plan. FEMA developed this plan, in part, due to a Biological Opinion in 2016 from National Marine Fisheries Services. The Biological Opinion recommended specific measures for FEMA to take to avoid jeopardizing endangered species, including interim compliance measures. The release of the Final Implementation Plan (Plan) is anticipated by 2026, following the Record of Decision in the Environmental Impact Statement (EIS) process, then FEMA will fully implement the Plan in 2027.

FEMA has heard concerns from several communities regarding challenges they are facing to meet the expectations of this Plan. To provide communities with the support needed to incorporate ESA considerations to their permitting of development in the floodplain, FEMA will inform, educate, and support our Oregon NFIP participating communities through the PICM before the Final Implementation Plan is released.

NFIP participating communities in Oregon must select one of the PICM pathways which include the following: (1) adopt a model ordinance that considers impacts to species and their habitat and requires mitigation to a no net loss standard; (2) choose to require a habitat assessment and mitigation plan for development on a permit-by-permit basis; or (3) putting in place a prohibition on floodplain development in the Special Flood Hazard Area (SFHA). Communities must pick a PICM pathway by December 1, 2024. If a community fails to inform FEMA of its selection, they will default to the permit-by-permit PICM pathway. Communities will be required to report their floodplain development activities to FEMA beginning in January of 2025. Failure to report may result in a

compliance visit.

As a part of the PICM, FEMA will implement a delay in the processing of two types of Letters of Map Changes in the Oregon NFIP-ESA Implementation Plan area, specifically Letters of Map Changes associated with the placement of fill in the floodplain: Conditional Letter of Map Revision Based on Fill (CLOMR-F) and Letter of Map Revision Based on Fill (LOMR-F) requests. This action was specifically requested by NMFS in their 2016 Biological Opinion and serves to remove any perceived programmatic incentive of using fill in the floodplain. This delay in processing will begin on August 1, 2024, and will be in place until the Final Implementation Plan is released.

Your community's ongoing participation in the NFIP is critical, as it provides access to flood insurance for property owners, renters, and businesses. In City Of North Plains there are currently 11 of NFIP policies in force representing \$3609000 in coverage for your community.

FEMA will be conducting informational virtual webinars this summer to provide an overview and status update for the Oregon NFIP-ESA integration, introduce the Pre-Implementation Compliance Measures, and provide an opportunity for Oregon NFIP floodplain managers to ask questions of FEMA staff. In the fall, FEMA will hold workshops to provide in-depth opportunities for local technical staff to work with FEMA technical staff, to understand and discuss issues relating to the PICM.

The webinars will be held virtually over Zoom. The information at each webinar is the same so your jurisdiction only needs to attend one. You can register for a webinar using the links below.

- Wednesday, July 31 at 3-5pm PT: <https://kearnswest.zoom.us/meeting/register/tZEkc-murjstGdPJiFioethjRk-id8N-k0hj>
- Tuesday, August 13 at 9:30-11:30am PT: <https://kearnswest.zoom.us/meeting/register/tZAod-isrTsqGN0KqckRLPPeaZuu4rv96lcR>
- Thursday, August 15 at 2-4pm PT: [https://kearnswest.zoom.us/meeting/register/tZlqcOGpqDojHtTXaa946aI9dMpCTcJIH\\_zt](https://kearnswest.zoom.us/meeting/register/tZlqcOGpqDojHtTXaa946aI9dMpCTcJIH_zt)
- Wednesday, August 21 at 12:30-2:30pm PT: <https://kearnswest.zoom.us/meeting/register/tZYqcuGsrD8rH9DZO22vG0v9KrnzVeUZA9gY>

FEMA will also develop a questionnaire to allow communities to identify how they currently incorporate or plan to incorporate ESA considerations, both in the short-term and long-term. To assist communities in making this determination, FEMA will be offering guidance on the potential pathways that help ensure current compliance. Communities will also be asked to help identify what technical assistance and training would be most beneficial. Feedback from this questionnaire will drive FEMA's engagement and outreach.

Upon completion of the Environmental Impact Statement review and determination, the Final Implementation Plan will be distributed along with several guidance documents and a series of Frequently Asked Questions. FEMA will also be starting NFIP Compliance Audits, in which we will be reviewing permits issued by communities for development in the floodplain and will expect the community to be able to demonstrate what actions are being taken to address ESA considerations.

If you have any questions, please contact us through our project email address [fema-r10-mit-](mailto:fema-r10-mit-)

Lenahan  
July 15 2024  
Page 3

[PICM@fema.dhs.gov](mailto:PICM@fema.dhs.gov). Thank you for your community's on-going efforts to reduce flood risk in your community and for your support as we worked toward these milestones.

Sincerely,

A handwritten signature in blue ink, appearing to read "Willie G. Nunn", with a horizontal line extending to the right.

Willie G. Nunn  
Regional Administrator  
FEMA Region 10

cc: SteveMiller, City Of North Plains  
John Graves, Floodplain Management and Insurance Branch Chief  
Deanna Wright, Oregon State National Flood Insurance Program Coordinator

Enclosure: Pre-Implementation Compliance Measures Fact Sheet

# Pre-Implementation Compliance Measures Overview

Beginning this summer, FEMA will assist communities with coming changes to the National Flood Insurance Program (NFIP) in Oregon.

## Why are the changes needed?

As the result of a Biological Opinion issued by the National Marine Fisheries Service, communities are required to demonstrate how floodplain development is compliant with the Endangered Species Act in Special Flood Hazard Areas. Changes are needed to protect the habitat of several species of fish and the Southern Resident killer whales to comply with the Endangered Species Act (ESA). FEMA outlined these changes in the [draft Oregon NFIP-ESA Implementation Plan](#).

## Current status

FEMA is evaluating proposed changes to the NFIP outlined in the Implementation Plan through an environmental impact statement (EIS), in compliance with the National Environmental Policy Act (NEPA).



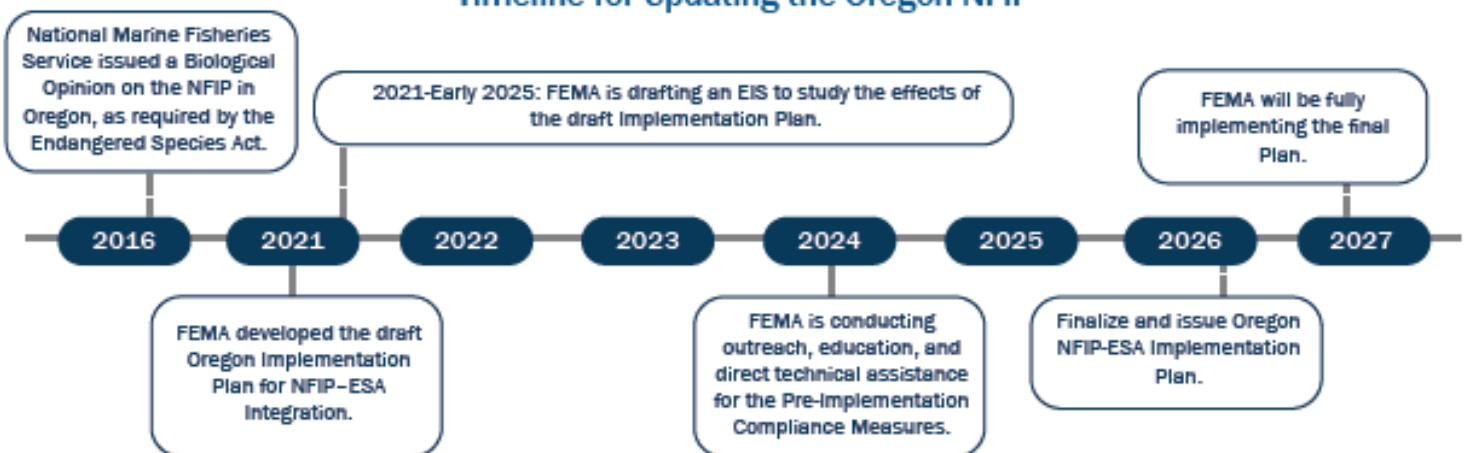
The National Flood Insurance Program serves to protect lives and property, while reducing costs to taxpayers due to flooding loss.

### What is “no net loss”?

Any development action resulting in negative impacts to one or more key floodplain functions that are then mitigated or avoided to offset said impacts.

The Final Implementation Plan is anticipated by 2026 following the Record of Decision in the EIS process, then FEMA will fully implement the plan in 2027. Until then, communities need to begin taking action to protect habitat and achieve “no net loss.” FEMA is offering several resources for communities to learn more and implement interim measures, called Pre-Implementation Compliance Measures (PICMs).

## Timeline for Updating the Oregon NFIP



## What can communities do to comply with these changes?

Oregon communities participating in the NFIP can take short-term measures to comply with ESA requirements, known as PICMs. FEMA developed these measures in response to concerns from communities about the time and resources needed to meet requirements and ensure their future good standing in the NFIP. By implementing these measures now, communities will be better prepared for compliance audits, which will begin when the Final Implementation Plan is in place.

Communities can select one of the following three PICMs:

- Prohibit all new development in the floodplain.
- Incorporate the ESA into local floodplain ordinances.
- Require permit applicants to develop a Floodplain Habitat Assessment documenting that their proposed development in the Special Flood Hazard Area will achieve “no net loss.”

Communities must report to FEMA on their implementation of interim measures.

In addition to the above measures, as of August 1, 2024, FEMA is temporarily suspending processing applications for Letters of Map Revision based on Fill (LOMR-Fs) and Conditional Letters of Map Revision based on Fill (CLOMR-Fs) in NFIP communities to avoid potentially negative effects on ESA-listed species.

## FEMA is here to support your community.

FEMA is offering several resources to assist communities in preparing for the Oregon NFIP-ESA Implementation Plan.

- **Informational Webinars (Summer 2024):** Learn about what FEMA is doing to revise the Implementation Plan and receive an introduction to the PICMs.
- **Questionnaire (Summer 2024):** Share what floodplain management measures your community is currently implementing to comply with the ESA, which PICMs you’re most interested in, and what support you need. Your feedback will help us plan the fall workshops and identify needs for technical assistance.
- **Workshops (Fall 2024):** Get an in-depth look at PICMs and talk through questions and concerns with FEMA staff.
- **Technical Assistance (Begins in Fall 2024):** Get support from FEMA to begin implementing PICMs.

### Learn more and participate

Visit [www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration](https://www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration) to read the latest information about NFIP-ESA Integration in Oregon.

You can also contact us at [FEMA-R10-MIT-PICM@fema.dhs.gov](mailto:FEMA-R10-MIT-PICM@fema.dhs.gov)



Date: September 16, 2024  
To: Mayor and City Council  
From: Rob Drake, Interim City Manager  
Subject: Ordinance No. 495: An Ordinance of the City Council Amending Municipal Code to Update the Rights-of-Way Use Requirements

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**Request:** It is requested that the City Council adopt Ordinance 495 to amend the Municipal Code's rights-of-way use requirements.

**Background:** Various utilities and communications service providers use the public rights-of-way to install facilities and provide services to customers in the City. The City manages this use of the rights-of-way to protect public safety and promote the public interest. The City's practice has been to require any entity that wishes to deploy or has deployed facilities in the rights-of-way in the City to obtain a franchise agreement from the City, which agreement authorizes the entity's use of the rights-of-way and sets the related terms and conditions for such use. However, the City currently does not have an ordinance expressly reflecting this practice, other than North Plains Municipal Code ("NPMC") Chapter 51, which applies only to certain telecommunications providers and has not been updated since 1999. The Council has directed staff to amend Chapter 51 to expressly state the City's rights-of-way management policies for all utilities and to update those policies to reflect current uses of the rights-of-way in the City.

The amended Chapter 51 includes three main updates:

First, Chapter 51 has been expanded to apply to all utilities using the rights-of-way in the City rather than applying only to certain telecommunications providers. The primary goal of this change is to ensure that the NPMC clearly establishes the rights-of-way requirements for all utility rights-of-way users, which promotes transparency and will better ensure that all such entities are subject to the same requirements, particularly with respect to construction, relocation and restoration within the rights-of-way.

Second, rather than following the current system of negotiating individual franchise agreements with each entity, the amendments implement a licensed-based approach for authorization to use the rights-of-way. Under a licensed-based system, the City will issue licenses to entities that have deployed or wish to deploy facilities in the rights-of-way instead of negotiating individual franchises with each entity. The license would authorize the use of the rights-of-way and obligate the licensee to comply with the terms of Chapter 51 and other applicable laws and ordinances. Existing franchises would remain in effect for the remainder of their terms, but upon expiration the intent is that current franchisees would transition to

licenses. However, the City Council retains the authority to grant a franchise to a utility when a variation in the terms of Chapter 51 for that utility would be in the public interest. The primary goals of the license-based system are to reduce the City's time and expenses related to franchise negotiations and to better ensure uniformity in the City's rights-of-way regulations.

Finally, amended Chapter 51 establishes the framework for rights-of-way use fees applicable to utilities using the rights-of-way in the City, which currently would be included in each franchise agreement. The Council will establish rights-of-way use fee rates in a fee resolution. The proposed fees will utilize the existing franchise fee rates. The fee structure has been updated to include two different fees. There is a "rights-of-way use fee" that applies to owners of facilities in the rights-of-way, which would replace current franchise fees as franchises expire. There is also a "rights-of-way access fee" that applies to entities that use facilities in the rights-of-way to serve customers in the City, without regard to whether they own the facilities used to provide service. The rates are the same for the "use fee" and the "access fee" and there is an offset between the two fees so that an entity that both owns facilities and provides services in the City would not pay both fees, but only the greater of the two fees. This fee structure, which has been adopted by many cities in Oregon, helps ensure that all entities that use the rights-of-way, directly or indirectly, pay comparable rates for that privilege, to the extent possible under State and federal law.

In addition to these three main changes, amended Chapter 51 includes updated and clarifying language in several areas, including provisions relating to location and relocation of utility facilities, insurance and the scope of authority the license grants to a utility.

Staff recommends approval of Ordinance No. 495.

**Fiscal Impact:** There may be a small increase in rights-of-way revenue if there are entities providing services in the City that are not currently subject to franchise fees, such as services provided by entities that use third party facilities in the City's rights-of-way. The licensing system should eliminate the expense of negotiating franchise agreements and the uniformity in rights-of-way requirements should reduce staff time dedicated to rights-of-way management.

**Recommendation:** Adopt Ordinance No. 495 to amend the Municipal Code to update the rights-of-way use requirements.

**Sample Motion:** I move to approve the first reading of Ordinance 495 to amend the Municipal Code to update the rights-of-way use requirements.

**Attachments:** Ordinance No. 495  
Including Exhibit A, proposed new Municipal Code Chapter 51

**ORDINANCE NO. 495**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH PLAINS,  
OREGON, AMENDING MUNICIPAL CODE TO UPDATE AND MODIFY  
THE RIGHTS-OF-WAY MANAGEMENT PROVISIONS**

WHEREAS, the City of North Plains has the authority pursuant to its Charter and the Oregon Constitution and statutes to manage its rights-of-way and to receive compensation for use of the rights-of-way consistent with applicable state and federal law; and

WHEREAS, in 1999, the City adopted what is now North Plains Municipal Code (NPMC) Chapter 51, Telecommunications Facilities, specifying the franchise and other rights-of-way requirements for certain telecommunications providers; and

WHEREAS, the City finds that updating NPMC Chapter 51 to extend the rights-of-way requirements to all utilities and to require licenses rather than individually negotiated franchise agreements will better ensure transparent, consistent and efficient management of the public rights-of-way; and

WHEREAS, the privilege tax imposed in NPMC Chapter 50 will be phased out and replaced with the rights-of-way use fees established in the amended NPMC Chapter 51; and

WHEREAS, the City finds it is in the public interest to enact the updates to the Municipal Code as set forth in this Ordinance.

**Now, therefore:**

**THE CITY OF NORTH PLAINS ORDAINS AS FOLLOWS:**

Section 1. The North Plains Municipal Code Chapter 51 shall be amended as stated in Exhibit A.

Section 2. The Section 50.20 of North Plains Municipal Code Chapter 50 shall be amended as follows (additions in underline):

**§ 50.20 PRIVILEGE TAX IMPOSED.**

A privilege tax of 5% is imposed on the gross revenues of any utility that has equipment in rights-of-way within the city, except that a utility that has obtained a license from the City and is timely

Ordinance No. 495  
Amending Municipal Code's rights-of-way use requirements  
Presented 9.16.24  
Adopted 10.7.24  
Page 1 of 2

paying the rights-of-way use fees required in Chapter 51 shall not be subject to the privilege tax in this section. The amount of any privilege tax due from a utility will be reduced by any franchise fee received by the city from that utility.

Section 3. This Ordinance shall become effective on the 30th day after its adoption.

ADOPTED by the North Plains City Council this 16th day of September 2024.

CITY OF NORTH PLAINS, OREGON

By: \_\_\_\_\_  
Teri Lenahan, Mayor

ATTEST:

By: \_\_\_\_\_  
Lori Lesmeister, City Recorder

Ordinance No. 495  
Amending Municipal Code's rights-of-way use requirements  
Presented 9.16.24  
Adopted 10.7.24  
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## ATTACHMENT A

### CHAPTER 51: ~~TELECOMMUNICATIONS-UTILITY~~ FACILITIES

#### Section

51.01 Jurisdiction and management of public right-of-way

51.02 Regulatory fees; compensation not a tax

51.03 Definitions

51.04 Registration of ~~telecommunications carriers~~utility providers

51.05 Construction standards

51.06 Location of ~~telecommunications-utility~~ facilities

51.07 ~~Telecommunications franchise~~Utility license

51.08 General ~~franchise license~~ terms

51.09 Rights-of-way fees

~~51.10~~ Governing law

51.11~~0~~ Written agreement

51.12~~1~~ Non-exclusive grant

51.13~~2~~ Severability and preemption

51.14~~3~~ Compliance with laws

~~51.14 Consent~~

51.15 Application to existing ordinance and agreements

~~51.16 Confidentiality~~

51.99 Penalty

#### § 51.01 JURISDICTION AND MANAGEMENT OF PUBLIC RIGHT-OF-WAY.

(A) The city has jurisdiction and exercises regulatory management over all public rights-of-way within the city under authority of the City Charter and state law.

~~(B) Public rights-of-way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and air space over these areas.~~

~~(C)~~ The city has jurisdiction and exercises regulatory management over each public right-of-way whether the city has a fee, easement or other legal interest in the public right-of-way. The city has jurisdiction and regulatory management of each public right-of-way whether the legal interest in the public right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

~~(D)~~ No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use public rights-of-way by licenses, franchises and permits.

~~(E)~~ The exercise of jurisdiction and regulatory management of a public right-of-way by the city is not official acceptance of the right-of-way and does not obligate the city to maintain or repair any part of the right-of-way.

~~(F)~~ The city retains the right and privilege to cut or move any telecommunications utility facilities located within the public rights-of-way of the city, as the city may determine to be necessary, appropriate or useful in response to a public health or safety emergency.

(Prior Code, § 3.25.010) (Ord. 258, passed 2-1-1999)

#### § 51.02 REGULATORY FEES; COMPENSATION NOT A TAX.

(A) The fees and costs provided for in this chapter, and any compensation charged and paid for use of the public rights-of-way provided for in this chapter, are separate from, and in addition to, any and all federal, state, local and city charges as may be levied, imposed or due from a telecommunications carrier utility operator or provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications utility services.

(B) (1) The city has determined that any fee provided for by this chapter is not subject to the property tax limitations of Art. XI, §§ 11 and 11b, of the state's Constitution.

(2) These fees are not imposed on property or property owners, and these fees are not new or increased fees.

(C) The fees and costs provided for in this chapter are subject to applicable federal and state laws.

(Prior Code, § 3.25.020) (Ord. 258, passed 2-1-1999)

## § 51.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined herein shall be given the meaning set forth in the Communications Policy Act of 1934, as amended, the Cable Communications Policy Act of 1984, being 47 U.S.C. §§ 521 et seq., the Cable Television Consumer Protection and Competition Act of 1992, being P.L. 102-385, and the Telecommunications Act of 1996. If not defined there, the words shall be given their common and ordinary meaning.

~~—ABOVEGROUND FACILITIES. See OVERHEAD FACILITIES.~~

~~—AFFILIATED INTEREST. The same meaning as ORS 759.010.~~

~~—CABLE ACT. The Cable Communications Policy Act of 1984, being 47 U.S.C. §§ 521 et seq., as now and hereafter amended.~~

**CABLE SERVICE.** Defined consistent with federal laws and means the one-way transmission to subscribers of video programming or other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

**CITY.** The City of North Plains, an Oregon municipal corporation, and individuals authorized to act on the city’s behalf.

**CITY COUNCIL.** The elected governing body of the City of North Plains, Oregon.

**CITY PROPERTY.** All real property owned by the city, other than public rights-of-way and utility easements, as those are defined herein, and all property held in a proprietary capacity by the city, which are not subject to public right-of-way franchising as provided in this chapter.

COMMUNICATIONS SERVICE. Any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. COMMUNICATIONS SERVICE includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) public communications systems; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (5) direct-to-

home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

~~—CONDUIT. Any structure, or portion thereof, containing one or more ducts, conduits, manholes, handholes, bolts or other facilities used for any telegraph, telephone, cable television, electrical or communications conductors, or cable right-of-way, owned or controlled, in whole or in part, by one or more public utilities.~~

CONSTRUCTION. Any activity in the public rights-of-way resulting in physical change thereto, including excavation or placement of structures, but excluding routine maintenance or repair of existing facilities.

~~—CONTROL or CONTROLLING INTEREST. Actual working control in whatever manner exercised.~~

~~—DAYS. Calendar days unless otherwise specified.~~

~~—DUCT. A single enclosed raceway for conductors or cable.~~

EMERGENCY. Has the meaning provided for in ORS 401.025. A circumstance, as determined by the City, in which immediate work to utility facilities is necessary to restore lost service or prevent immediate harm to persons or property.

FEDERAL COMMUNICATIONS COMMISSION ~~or FCC~~. The federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

FRANCHISE. An agreement between the city and a grantee which grants a privilege to use public right-of-way ~~and utility easements~~ within the city for a dedicated purpose and for specific compensation.

GRANTEE. The person to which a license or franchise is granted by the city.

LICENSEE. The person to whom a license is granted.

~~OREGON PUBLIC UTILITIES COMMISSION or OPUC~~. The Oregon Public Utilities Commission, which is the statutorily created state agency in the state responsible for licensing, regulation and administration of certain ~~telecommunications carriers~~utility providers as set forth in state law, or its lawful successor.

~~—OVERHEAD OR ABOVEGROUND FACILITIES. Utility poles, utility facilities and telecommunications facilities above the surface of the ground, including the underground supports and foundations for such facilities.~~

PERSON. An individual, corporation, company, association, joint stock company or association, firm, partnership or limited liability company.

~~—PRIVATE TELECOMMUNICATIONS NETWORK. A system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for his or her use and not for resale, directly or indirectly. PRIVATE TELECOMMUNICATIONS NETWORK includes services provided by the state pursuant to ORS 190.240 and 283.140.~~

PUBLIC COMMUNICATIONS SYSTEM. Any system owned or operated by a government entity or entities for its exclusive use for internal communications or communications with other government entities, and includes services provided by the State of Oregon pursuant to ORS 283.140. PUBLIC COMMUNICATIONS SYSTEM does not include any system used for sale or resale, including trade, barter or other exchange of value, of communications services or capacity on the system, directly or indirectly, to any person.

~~PUBLIC RIGHTS-OF-WAY. Include, but are not limited to, The streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland or other city property not generally open to the public for travel. This definition applies only to the extent of the city’s right, title, interest or authority to grant a license or franchise to occupy and use such areas for telecommunications utility facilities. PUBLIC RIGHTS-OF-WAY shall also include utility easements, as defined below.~~

PUBLIC UTILITY EASEMENT. Any easement granted to or owned by the city and acquired, established, dedicated or devoted for public utility purposes. “PUBLIC UTILITY EASEMENT” does not include an easement solely for the construction, reconstruction, operation, maintenance, inspection or repair of city structures, equipment or facilities, or where the proposed use by the utility operator is inconsistent with the terms of the easement granted to the city.

STATE. The State of Oregon.

~~—TELECOMMUNICATIONS. The transmission between and among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.~~

~~—TELECOMMUNICATIONS ACT. The Communications Policy Act of 1934, as amended by subsequent enactments, including the Telecommunications Act of 1996 (47 U.S.C. §§ 151 et seq.) and as hereafter amended.~~

~~—TELECOMMUNICATIONS CARRIER. Any provider of telecommunications services and includes every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the city.~~

~~—TELECOMMUNICATIONS FACILITIES. The plant and equipment, other than customer premises equipment, used by a telecommunications carrier to provide telecommunications services.~~

~~—TELECOMMUNICATIONS SERVICE. Two-way switched access and transport of voice communications, but does not include:~~

~~—(1) Services provided by radio common carrier;~~

~~—(2) One-way transmission of television signals;~~

~~—(3) Surveying;~~

~~—(4) Private telecommunications networks; or~~

~~—(5) Communications of the customer which take place on the customer side of on-premises equipment.~~

~~—TELECOMMUNICATIONS SYSTEM. See TELECOMMUNICATIONS FACILITIES.~~

~~—TELECOMMUNICATIONS UTILITY. Has the same meaning as ORS 759.005(1).~~

~~—UNDERGROUND FACILITIES. Utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for “overhead facilities”.~~

~~—USABLE SPACE. All the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground level.~~

~~—UTILITY EASEMENT. Any easement granted to or owned by the city and acquired, established, dedicated or devoted for public utility purposes.~~

UTILITY FACILITIES. The plant, equipment and property, including, but not limited to, the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located or to be located under, on or above the surface of the ground within the public right-of-way of the city and used or to be used for the purpose of providing utility ~~or telecommunications~~ services.

UTILITY OPERATOR. Any person who owns, operates or controls a utility facility within the public rights-of-way in the city.

UTILITY PROVIDER. A person that provides utility services using utility facilities in the city, whether or not the utility facilities are owned by such provider.

UTILITY SERVICES. The provision, by means of utility facilities permanently located within, under or above the public rights-of-way, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, cable services, water, sewer or storm sewer to or from customers within the corporate boundaries of the city, or the transmission of any of these services through the city whether or not customers within the city receive those transmissions or services.

WORK. The construction, demolition, installation, replacement, repair, maintenance, or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance, or relocation.

(Prior Code, § 3.25.025) (Ord. 258, passed 2-1-1999)

§ 51.04 REGISTRATION OF ~~TELECOMMUNICATIONS CARRIERS~~UTILITY PROVIDERS.

(A) ~~Purpose. The purpose of registration is:~~

~~—(1) To assure that all telecommunications carriers who have facilities and/or provide services within the city comply with the ordinances, rules and regulations of the city;~~

~~—(2) To provide the city with accurate and current information concerning the telecommunications carriers who offer to provide telecommunications services within the city, or that own or operate telecommunications facilities within the city; and~~

~~—(3) To assist the city in the enforcement of this chapter and the collection of any city franchise fees or charges that may be due the city.~~

~~(B) Registration required.~~

(1) Except as provided in division (D) below, all ~~telecommunications carriers having telecommunications facilities within the corporate limits of the city, and all telecommunications carriers~~utility providers that offer or provide ~~telecommunications utility~~ service to customer premises within the city, shall register with the city prior to providing any utility services in the city. ~~the appropriate application and license from:~~

(2) Every person providing utility services to customers within the city as of the effective date of this chapter shall register within 30 days of the effective date of this chapter.

(3) After registering with the city pursuant to subsections (A)(1) or (A)(2) of this section, each registrant shall, by December 31st of each year, file with the city a new registration form if it intends to provide any utility services in the city at any time in the following calendar year. Registrants that file an initial registration pursuant to subsection (A)(1) or (A)(2) of this section on or after September 30th shall not be required to file an annual registration until December 31st of the following year, except as provided in subsection (A)(4) of this section.

(4) A registrant that provides additional utility services not listed on its current registration shall submit a new registration application that lists such services not later than 30 days after commencing the provision of those utility services to customers in the city.

(B) Application. Applicants shall provide the following information:

~~—(a) The state’s Public Utility Commission (PUC); or~~

~~—(b) The Federal Communications Commission (FCC) qualify as necessary registration information.~~

~~—(2) Applicants also have the option of providing the following information:~~

~~—(a1) The identity and legal status of the registrant, including the name, address and telephone number of the duly authorized officer, agent or employee responsible for the accuracy of the registration information;~~

~~—(b2) The name, address and telephone number for the duly authorized officer, agent or employee to be contacted in case of an emergency;~~

~~—(c3) A description of the registrant’s existing or proposed telecommunications facilities within the city, a description of the telecommunications facilities that the registrant intends to construct and a description of the telecommunications utility service that the registrant intends to offer or provide to persons, firms, businesses or institutions within the city;~~

(4) Any applicable approvals from the Oregon Public Utility Commission and/or the Federal Communications Commission; and

~~—(d5) Information sufficient to determine whether the transmission, origination or receipt of the telecommunications utility services provided, or to be provided, by the registrant constitutes an occupation or privilege subject to any business license requirements. A copy of the business license or the license number must be provided, if applicable.~~

(C) Registration fee. Each application for registration as a telecommunications carrier utility provider shall be accompanied by a non-refundable registration fee in the amount of ~~\$35, or as otherwise~~ established by resolution of the City Council.

(D) Exceptions to registration. A utility provider that has a license or franchise pursuant to this chapter is not required to register to provide the services expressly authorized by the city in the license or franchise. The following telecommunications carriers are excepted from registration:

~~—(1) Telecommunications carriers that are owned and operated exclusively for its own use by the state or a political subdivision of the state; and~~

~~—(2) A private telecommunications network; provided that, such network does not occupy any public rights-of-way of the city.~~

(Prior Code, § 3.25.030) (Ord. 258, passed 2-1-1999)

§ 51.05 CONSTRUCTION STANDARDS.

(A) General. No person shall commence or continue with ~~any work on, the construction, installation~~ or operation of ~~telecommunications utility~~ facilities within a public right-of-way, except as provided in divisions (B) through (O) below and in compliance with all applicable codes, rules and regulations.

(B) Construction codes. ~~Telecommunications Utility~~ facilities shall be constructed, installed, operated and maintained in accordance with, and the permittee shall at all times comply with, all applicable federal, state and local codes, rules and regulations, including the National Electrical Code and the National Electrical Safety Code, and the permit issued by the city.

(C) Construction permits. No person shall construct or install any ~~telecommunications utility~~ facilities or perform any work within a public right-of-way without first obtaining ~~all construction~~ permits required in chapter 50 of this Code and paying the ~~construction applicable~~ permit ~~fee established in division (G) below~~. No permit shall be issued for the construction or installation of ~~telecommunications utility~~ facilities or work within a public right-of-way:

~~—(1) Unless the telecommunications carrier has first filed a registration statement with the city pursuant to § 51.04 of this chapter and, if applicable; and~~

~~—(2) U~~ unless the telecommunications carrier utility operator has first applied for and received a ~~franchise license~~ pursuant to § 51.07 of this chapter or holds a valid franchise from the city. Notwithstanding the other provisions of this subsection (C), in the event of an emergency, a utility operator with a license pursuant to this chapter or a valid franchise agreement, or the utility operator's contractor, may perform work on its utility facilities without first obtaining a permit from the city; provided, that, to the extent reasonably feasible, it attempts to notify the city prior to commencing the emergency work and in any event applies for a permit from the city and pays all applicable permit fees as soon as reasonably practicable, but not more than 48 hours after commencing the emergency work.

~~—(D) Permit applications. Applications for permits to construct telecommunications facilities shall be submitted upon forms to be provided by the city and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:~~

~~—(1) The facilities will be constructed in accordance with all applicable codes, rules and regulations;~~

~~—(2) The facilities will be constructed in accordance with the franchise agreement;~~

~~—(3) The location and route of all facilities to be installed aboveground or on existing utility poles;~~

~~—(4) The location and route of all new facilities on or in the public rights-of-way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public rights-of-way. Existing facilities shall be differentiated on the plans from new construction;~~

~~—(5) The location of all of applicant's existing underground utilities, conduits, ducts, pipes, mains and installations, which are within the public rights-of-way along the underground route proposed by the applicant. A cross-section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right-of-way; and~~

~~—(6) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the public rights-of-way and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.~~

~~—(E) Applicant's verification. All permit applications shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.~~

~~—(F) Construction schedule. All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the city.~~

~~—(G) Construction permit fee. Unless otherwise provided in a franchise agreement, prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount consistent with this chapter or as otherwise determined by resolution of the City Council. Such fee shall be designed to defray the costs of city administration of the requirements of this chapter.~~

~~—(H) Issuance of permit. If satisfied that the applications, plans and documents submitted comply with all requirements of this chapter and the franchise agreement, the city shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as it may deem necessary or appropriate.~~

**(ID)** Notice of construction. Except in the case of an emergency, the permittee shall notify the city not less than two working days in advance of any excavation or construction in the public rights-of-way.

**(JE)** Compliance with permit. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The city and its representatives shall be provided access to the work site and such further information as it may require to ensure compliance with such requirements.

**(KE)** Non-complying work. Subject to the notice requirements in § 51.06(D) of this chapter, all work which does not comply with the permit, the approved or corrected plans

and specifications for the work, or the requirements of this chapter, shall be removed or corrected as directed by the city, at the sole expense of the permittee.

(~~LG~~) Completion of construction. The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights-of-way and other public and private property. All construction work within city rights-of-way, including restoration, must be completed within 120 days of the date of issuance commencement of work the construction permit unless an extension or an alternate schedule has been approved pursuant to the schedule submitted and approved by the appropriate city official as contemplated by division (F) above.

(~~MH~~) As-built drawings. If requested by the city, the permittee shall furnish the city with two complete sets of plans drawn to scale and certified to the city as accurately depicting the location of all telecommunications-utility facilities constructed pursuant to the permit. These plans shall be submitted to the City Engineer or designee within 60 days after completion of construction, in a format mutually acceptable to the permittee and the city.

(~~NI~~) Restoration of public rights-of-way and city property.

(1) When a permittee, or any person acting on its behalf, does any work in or affecting any public rights-of-way or city property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such public rights-of-ways or property to good order and the same or better condition as existed before the work unless otherwise directed by the city and as determined by the City Engineer or designee.

(2) If weather or other conditions do not permit the complete restoration required by this section, the permittee shall temporarily restore the affected public rights-of-way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule shall be subject to approval by the city.

(3) If the permittee fails to restore any portion of the public rights-of-way as required in this chapter and the permit issued by the city or property to good order and condition, the city shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding 30 days to restore the public rights-of-way or property. If, after said notice, the permittee fails to restore the public rights-of-way or property to as good a condition as existed before the work was undertaken or as otherwise directed by the city pursuant to this subsection, the city shall cause such restoration to be made at the expense of the permittee.

(4) A permittee or other person acting in its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all

members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting ~~such the public~~ rights-of-way ~~or property~~.

~~(O)~~ Performance and completion bond. Permittee shall comply with the bond requirement in § 50.07 of this code. ~~Unless otherwise provided in a franchise agreement, a performance bond or other form of surety acceptable to the city equal to at least 100% of the estimated cost of constructing permittee's telecommunications facilities within the public rights-of-way of the city shall be provided before construction is commenced.~~

(1) The surety shall remain in force until 60 days after substantial completion of the work, as determined in writing by the city, including restoration of public rights-of-way and other property affected by the construction.

(2) The surety shall guarantee, to the satisfaction of the city:

(a) Timely completion of construction;

(b) Construction in compliance with applicable plans, permits, technical codes and standards;

(c) Proper location of the facilities as specified by the city;

(d) Restoration of the public rights-of-way and other property affected by the construction; and

(e) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

(Prior Code, § 3.25.035) (Ord. 258, passed 2-1-1999)

#### § 51.06 LOCATION OF ~~TELECOMMUNICATIONS UTILITY~~ FACILITIES.

(A) Location of facilities. All utility facilities located within the public right-of-way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:

(1) Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a public right-of-way of the city, a grantee with permission to occupy the same public right-of-way must also locate its ~~telecommunications~~ utility facilities underground; and

(2) Whenever all new or existing electric utilities, cable facilities or telecommunications facilities are located ~~or relocated~~ underground within a public right-of-way of the city, a grantee that currently occupies the same public right-of-way shall relocate its facilities underground concurrently with the other affected utilities to minimize

disruption of the public right-of-way, absent extraordinary circumstances or undue hardship as determined by the city ~~and consistent with applicable state and federal law.~~

(B) Interference with the public rights-of-way. No grantee may locate or maintain its ~~telecommunications-utility~~ facilities so as to unreasonably interfere with the use of the public rights-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the public rights-of-way. All use of public rights-of-way shall be consistent with city codes, ordinances and regulations.

(C) Relocation or removal of facilities. Except in the case of an emergency, within 90 days following written notice from the city, a grantee shall, at no expense to ~~grantor~~ the city, temporarily or permanently remove, relocate, change or alter the position of any ~~telecommunications-utility~~ facilities within the public rights-of-way, including relocation of aerial facilities underground, whenever the city shall have determined that such removal, relocation, change, ~~or~~ alteration, or undergrounding is reasonably necessary for:

(1) The construction, repairs, maintenance or installation of any city or other public improvement in or upon the public rights-of-way;

(2) The operations of the city or other governmental entity in or upon the public rights-of-way; and/or

(3) The public interest.

The underground relocation requirement of this subsection (C) shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of 35,000 volts, or to antennas, pedestals, cabinets or other equipment where underground operation is not technically feasible and the city has approved an aboveground location. The City may agree in writing to extend the 90-day time period provided in this subsection.

(D) Removal of unauthorized facilities. Within 30 days following written notice from the city, any grantee, ~~telecommunications carrier~~ or ~~other person~~ utility operator that owns, operates, controls or maintains any unauthorized ~~telecommunications system,~~ facility utility facilities or related appurtenances within the public rights-of-way of the city shall, at its own expense, remove such utility facilities or appurtenances from the public rights-of-way of the city. If a utility operator fails to remove any abandoned facilities or appurtenances, the utility operator shall pay all costs and expenses incurred by the city due to such failure, including but not limited to costs related to project delays, and the city may cause the utility facility or appurtenances to be removed at the utility operator's expense using qualified workers in accordance with applicable state and federal laws and regulations. The utility operator shall reimburse the city within 30 days of receipt of an invoice from the city. A ~~telecommunications system~~ ~~or utility~~ facility is unauthorized and subject to removal in the following circumstances:

(1) One year after the expiration, revocation or termination of the grantee's ~~telecommunications franchise~~ license;

(2) Upon abandonment of a utility facility within the public rights-of-way of the city. A utility facility, or any portion of a utility facility, will be considered “abandoned” when it is deactivated, out of service or not used for its intended and authorized purpose for a period of 90 days or longer. A utility facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the utility facility is being replaced;

(3) If the ~~system or~~utility facility was constructed or installed without the appropriate prior authority at the time of installation; or

(4) If the ~~system or~~utility facility was constructed or installed at a location not permitted by the ~~grantee’s telecommunications~~license or franchise or ~~other legally sufficient~~the permit issued by the city.

(E) Coordination of construction activities. All grantees are required to make a good faith effort to cooperate with the city in coordinating work in the public rights-of-way.

(1) By January 1 of each year, grantees shall provide the city with a schedule of their proposed construction activities in, around or that may affect the public rights-of-way.

(2) If requested by the city, each grantee shall meet with the city annually or as determined by the city, to schedule and coordinate construction in the public rights-of-way. At that time, city will provide available information on plans for local, state and/or federal construction projects.

(3) All construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer or his or her designee, to minimize public inconvenience, disruption or damages.

(Prior Code, § 3.25.040) (Ord. 258, passed 2-1-1999)

#### § 51.07 ~~TELECOMMUNICATIONS FRANCHISE~~UTILITY LICENSE.

(A) ~~Telecommunications franchise~~Utility License. A ~~telecommunications franchise~~utility license shall be required of any ~~telecommunications carrier~~utility operator who desires to occupy public rights-of-way of the city, and shall be obtain prior to undertaking any work in the public rights-of-way. Every person that owns, operates or controls utility facilities as of the effective date of this chapter shall apply for a license from the city within 30 days of the later of (i) the effective date of this chapter, or (ii) the expiration of a valid franchise agreement granted by the city, unless a new franchise agreement is granted by the city pursuant to subsection L of this section.

(B) Application. Any person that desires a ~~telecommunications franchise~~utility license ~~must register as a telecommunications carrier and~~ shall file an application with the city.<sup>5</sup> The license application shall be on a form provided by the city, and shall be accompanied by any additional documents required by the application or the city to identify the

applicant, its legal status, including its authorization to do business in Oregon, a description of the utility facilities in the public rights-of-way or to be installed in the public rights-of-way, a description of type of utility service provided or to be provided by the applicant, if any, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this chapter. which includes the following information:

~~— (1) The identity of the applicant;~~

~~— (2) A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities;~~

~~— (3) Engineering plans, specifications and a network map in a form customarily used by the applicant of the facilities located or to be located within the public rights-of-way in the city, including the location and route requested for applicant's proposed telecommunications facilities;~~

~~— (4) The area or areas of the city the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area;~~

~~— (5) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed; and~~

~~— (6) An accurate map showing the location of any existing telecommunications facilities in the city that applicant intends to use or lease.~~

(C) Application and review fee. The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the city council.

~~— (1) Subject to applicable state law, the applicant shall reimburse the city for such reasonable costs as the city incurs in entering into the franchise agreement.~~

~~— (2) An application and review fee of \$2,000 shall be deposited with the city as part of the application filed pursuant to division (B) above. Expenses exceeding the deposit will be billed to the applicant or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise.~~

(D) Determination by the city. The city shall issue a written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial. The application shall be evaluated based upon the provisions of this chapter, the continuing capacity of the public rights-of-way to accommodate the applicant's proposed utility facilities and the applicant's ability to comply with applicable federal, state and local laws, rules, regulations and policies.

(E) Rights granted.

(1) No franchise license granted pursuant to this chapter shall convey any right, title or interest in the public rights-of-way, but shall be deemed a grant to use and occupy the public rights-of-way for the limited purposes and term stated in the franchise agreement license and as provided in this chapter. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title of record that may affect the public rights-of-way.

(2) A license shall authorize the licensee, subject to the provisions of the city codes, including this chapter, and other applicable provisions of state or federal law, as amended from time to time, to construct, place, maintain, upgrade, repair and operate utility facilities in the public rights-of-way for the term of the license for the provision of the utility service(s) authorized in the license. In the event the licensee, or another utility provider using the licensee's facilities, offers different utility service(s) than those authorized in the license, the licensee shall inform the city of such changes no later than 30 days after the provision of such services.

(3) Nothing in the license shall be construed to prevent the city from grading, paving, repairing and/or altering any rights-of-way, constructing, laying down, repairing, relocating or removing city facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any city facilities. If any of licensee's utility facilities interfere with the construction, repair, relocation, replacement, alteration or removal of any rights-of-way, public work, city utility, city improvement or city facility, licensee's facilities shall be removed or relocated as provided in this chapter.

(4) Neither the issuance of the license nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental right or power, including, without limitation, the police power or regulatory power of the city.

(F) Term of grant. Unless otherwise specified in a franchise agreement Subject to the revocation and termination provisions of this chapter, a telecommunications franchise utility license granted hereunder shall be in effect for a term of 5 years.

(G) Franchise territory. Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be limited to a specific geographic area of the city to be served by the franchise grantee, and the public rights-of-way necessary to serve such areas, and may include the entire city.

(H) Multiple Services.

(1) A utility operator that provides or transmits or allows the provision or transmission of utility services and non-utility services over its facilities is subject to the license and fee requirements of this chapter for the portion of the facilities and extent of utility services delivered by the utility operator over those facilities.

~~—(2) A utility operator that provides or transmits more than one utility service to customers in the city is not required to obtain a separate license or franchise for each utility service, but is required to pay the rights-of-way access fees due for each utility service the utility operator provides.~~

~~—(H) Franchise fee. Each franchise granted by the city is subject to the city's right, which is expressly reserved, to fix a fair and reasonable compensation to be paid for the privileges granted; provided, nothing in this chapter shall prohibit the city and a grantee from agreeing to the compensation to be paid. The compensation shall be subject to the specific payment terms and conditions contained in the franchise agreement and applicable state and federal laws.~~

~~—(I) Amendment of grant. Conditions for amending a franchise:~~

~~—(1) A new application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public rights-of-way of the city which are not included in a franchise previously granted under this chapter;~~

~~—(2) If ordered by the city to locate or relocate its telecommunications facilities in public rights-of-way not included in a previously granted franchise, the city shall grant an amendment without further application; and~~

~~—(3) A new application and grant shall be required of any telecommunications carrier that desires to provide a service which was not included in a franchise previously granted under this chapter.~~

~~(J) Renewal applications. A grantee that desires to renew its franchise license under this chapter shall, not less than 30 days but no more than 180 days before expiration of the current agreement license, file an application with the city, including all information required in subsection (B) of this § 51.07 and pay the application fee required in subsection (C) of this § 51.07. The city shall review the application as required by subsection (D) of this § 51.07 and grant or deny the license within 90 days of submission of the application. If the city determines that the licensee is in violation of the terms of this chapter at the time it submits its application, the city may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the city, before the city will consider the application and/or grant the license. If the city requires the licensee to cure or submit a plan to cure a violation, the city will grant or deny the license application within 90 days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation. ~~for renewal of its franchise which shall include the following information:~~~~

~~—(1) The information required pursuant to division (B) above; and~~

~~—(2) Any information required pursuant to the franchise agreement between the city and the grantee.~~

~~—(K) Renewal determinations. Within 90 days after receiving a complete application, the city shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for non-renewal:~~

~~—(1) The financial and technical ability of the applicant;~~

~~—(2) The legal ability of the applicant;~~

~~—(3) The continuing capacity of the public rights-of-way to accommodate the applicant's existing and proposed facilities;~~

~~—(4) The applicant's compliance with the requirements of this chapter and the franchise agreement;~~

~~—(5) Applicable federal, state and local telecommunications laws, rules and policies; and~~

~~—(6) Such other factors as may demonstrate that the continued grant to use the public rights-of-way will serve the community interest.~~

~~—(L) Obligation to cure as a condition of renewal. No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the city.~~

~~(M) Assignments or transfers of system, license or franchise. Except as otherwise provided by applicable State and federal law or as otherwise provided in a franchise, Ownership or control of a majority interest in a ~~telecommunications system~~utility facility, license or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the city, which consent may include conditions prescribed by the city, ~~which consent shall not be unreasonably withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.~~~~

(1) The grantee and the proposed assignee or transferee of the license, franchise or ~~system~~utility facilities shall agree, in writing, to assume and abide by all of the provisions of the license or franchise.

(2) No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the ~~telecommunications system~~utility facilities pursuant to this chapter.

(3) Unless ~~otherwise provided in a franchise agreement~~expressly prohibited by applicable law, the grantee shall reimburse the city for all direct and indirect fees, costs and expenses reasonably incurred by the city in considering a request to transfer or assign a telecommunications franchise.

(4) Any transfer or assignment of a ~~telecommunications license~~, franchise, ~~system utility facilities~~ or integral part of ~~a system utility facilities~~ without prior approval of the city under this chapter ~~or pursuant to a franchise agreement~~ shall be void and is cause for revocation of the license or franchise.

(~~NK~~) Revocation or termination of license or franchise.

(1) A license or franchise to use or occupy public rights-of-way of the city may be revoked for the following reasons:

~~\_(1a)~~ Construction or operation in the city or in the public rights-of-way of the city without ~~a construction~~constructional applicable permits;

~~\_(2b)~~ Construction or operation at an unauthorized location;

~~\_(3c)~~ Failure to comply with division (~~MJ~~) above with respect to sale, transfer or assignment of a ~~telecommunications system utility facility, license~~ or franchise;

~~\_(4d)~~ Misrepresentation by or on behalf of a grantee in any application to the city;

~~\_(5e)~~ Abandonment of ~~telecommunications utility~~ facilities in the public rights-of-way;

~~\_(6f)~~ Failure to relocate or remove facilities as required in this chapter;

~~\_(7g)~~ Failure to pay taxes, compensation, fees or costs when and as due the city under this chapter;

~~\_(8h)~~ Insolvency or bankruptcy of the grantee;

~~\_(9i)~~ Violation of material provisions of this chapter; and

~~\_(10j)~~ Violation of the material terms of a license or franchise agreement.

~~\_(02)~~ Notice and duty to cure. In the event that the city believes that grounds exist for revocation of a license or franchise, the city shall give the grantee written notice of the apparent violation or non-compliance, providing a short and concise statement of the nature and general facts of the violation or non-compliance and providing the grantee a reasonable period of time, not exceeding 30 days, to furnish evidence that:

~~\_(1a)~~ Corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or non-compliance;

~~\_(2b)~~ Rebutts the alleged violation or non-compliance; and/or

~~\_(3c)~~ It would be in the public interest to impose some penalty or sanction less than revocation.

~~\_(P3)~~ Public hearing. In the event that a grantee fails to provide evidence reasonably satisfactory to the city as to its performance consistent with this chapter and the license or

franchise, the city staff shall refer the apparent violation or non-compliance to the City Council. The City Council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

~~\_(Q4)~~ Standards for revocation or lesser sanctions. If persuaded that the grantee has violated or failed to comply with material provisions of this chapter, or of a license or franchise agreement, the City Council shall determine whether to revoke the license or franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors. Whether:

- ~~\_(1a)~~ The misconduct was egregious;
- ~~\_(2b)~~ Substantial harm resulted;
- ~~\_(3c)~~ The violation was intentional;
- ~~\_(4d)~~ There is a history of prior violations of the same or other requirements;
- ~~\_(5e)~~ There is a history of overall compliance; and/or
- ~~\_(6f)~~ The violation was voluntarily disclosed, admitted or cured.

(5) The provisions of this subsection K are in addition to, and in no way limit, the other penalties provided in this chapter and any other remedies the city may have in law or in equity.

~~(RL)~~ Franchise Agreements. If the public interest warrants, as determined by the city in its sole discretion, the city and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this chapter with the review and approval of city council. The franchisee shall be subject to the provisions of this chapter to the extent such provisions are not in conflict with the express provisions of any such franchise. In the event of a conflict between the express provisions of a franchise and this chapter, the franchise shall control.

~~Other city costs. All grantees shall, within 30 days after written demand therefor, reimburse the city for all reasonable direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement consistent with applicable state and federal laws.~~

(Prior Code, § 3.25.045) (Ord. 258, passed 2-1-1999) Penalty, see § 51.99

§ 51.08 GENERAL ~~FRANCHISE-LICENSE~~ TERMS.

(A) Maintenance. The utility operator shall be solely responsible for any repairs or maintenance required to keep its facilities in a clean, safe and code-compliant condition. The operator, at its sole cost and expense, shall repair any damage to its facilities within: (1) 30 days after the permittee discovers or receives notice (written or verbal) that such damage exists or (2) immediately if such repairs are necessary to preserve life or property. If, after notice from the city of the need for repair or maintenance as required in this subsection (A), a utility operator fails to repair and maintain utility facilities as requested by the city and by the date reasonably established by the city, the city may perform such repair or maintenance using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole cost and expense. Within 30 days of receipt of a detailed invoice from the city, the utility operator shall reimburse the city the full invoiced amount.

(B) Facilities. Upon request, each grantee shall provide the city with an accurate map or maps certifying the location of all ~~telecommunications-utility~~ facilities within the public rights-of-way. Each grantee shall provide updated maps annually.

(BC) Damage to grantee's facilities. Unless directly and proximately caused by the negligence or willful misconduct, intentional or malicious acts by the city, the city shall not be liable for any damage to or loss of any ~~telecommunications-utility~~ facility within the public rights-of-way of the city as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling or work of any kind in the public rights-of-way by or on behalf of the city. ~~In no event shall the city be liable~~ for any consequential losses resulting directly or indirectly therefrom.

(CD) Duty to provide information. Within ten business days of a written request from the city, each grantee shall furnish the city with ~~the following information sufficient to demonstrate:~~

(1) Information sufficient to demonstrate ~~that~~ the grantee has complied with all requirements of this chapter; and

(2) All books, records, maps and other documents, maintained by the grantee with respect to its facilities within the public rights-of-way ~~shall be made available for inspection by the city at reasonable times and intervals.~~

~~(D) Service to the city.~~

~~(1) If the city contracts for the use of telecommunication facilities, telecommunication services, installation or maintenance from the grantee, the grantee shall charge the city the grantee's most favorable rate offered at the time of the request charged to similar users within the state for a similar volume of service, subject to any of the grantee's tariffs or price lists on file with the OPUC. With the city's permission, the grantee may deduct the applicable charges from fee payments.~~

~~—(2) Other terms and conditions of such services may be specified in a separate agreement between the city and the grantee.~~

(E) Compensation for city property. If any right is granted, by lease, franchise or other manner, to use and occupy city property for the installation of ~~telecommunications utility~~ facilities, the compensation to be paid for such right and use shall be fixed by the city. ~~No license issued pursuant to this chapter shall grant any right, privilege, license or authority to install utility facilities in or otherwise use or occupy city property.~~

(F) Cable franchise. ~~Telecommunication carriers~~Utility operators providing cable service shall be subject to the separate cable franchise requirements of the city and other applicable authority, subject to applicable law.

(G) Leased capacity. A grantee shall have the right, without prior city approval, to offer or provide capacity or bandwidth to its customers; provided that, (i) the use of the grantee's utility facilities does not require or involve any additional equipment owned or operated by the lessee to be installed in or on the facility (unless the lessee has obtained a ROW license or franchise from the city); and (ii) the grantee provides the city with the name and business address of any lessee within 30 days of the effective date of the lease or other agreement to provide capacity or bandwidth~~the grantee shall notify the city that such lease or agreement has been granted to a customer or lessee.~~

(H) Grantee insurance.

(1) Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the city, and its elected and appointed officers, officials, agents and employees as ~~coinsured~~additional insureds:

~~\_(1a)~~ Comprehensive-Commerical general liability insurance with limits not less than:

~~\_(a)~~ Three million dollars for bodily injury or death to each person;

~~\_(b)~~ Three million dollars for property damage resulting from any one accident; and

~~\_(c)~~ Three million dollars for all other types of liability.

(2b) Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000 for each person and \$3,000,000 for each accident;

(3c) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000;

(4d) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000;

(52) The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities in the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing.

(3) The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the ~~telecommunications license or~~ franchise, and such other period of time during which the ~~grantee utility operator~~ is operating without a ~~license or~~ franchise hereunder, or is engaged in the removal of its ~~telecommunications utility~~ facilities. Each such insurance policy shall contain the following endorsement or a substantially similar endorsement acceptable to the city: “It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the city, by registered mail, of a written notice addressed to the city of such intent to cancel or not to renew”;

(64) Within 60 days after receipt by the city of said notice, and in no event later than 30 days prior to said cancellation, the grantee shall obtain and furnish to the city evidence that the grantee meets requirements of this section; and

(75) As an alternative to the insurance requirements contained herein, a grantee may provide evidence of self-insurance subject to review and acceptance by the city.

(I) General indemnification. ~~Each franchise agreement shall include, to~~ the fullest extent permitted by law, a grantee ~~'s express undertaking to shall~~ defend, indemnify and hold the city and its officers, employees, agents and representatives harmless from and against any and all damages, losses, costs and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, or any acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its ~~telecommunications utility~~ facilities, and in providing or offering ~~telecommunications utility~~ services over the utility facilities ~~or network~~, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a license or franchise agreement made or entered into pursuant to this chapter.

(J) Performance surety. Upon request by the city, Before a license or franchise granted pursuant to this chapter is effective, and as necessary thereafter, the grantee shall provide a performance bond, in form and substance acceptable to the city and in an amount reasonably determined by the city, as security for the full and complete performance of a franchise granted under this chapter, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the city. This obligation is in addition to ~~the any performance bond or~~ surety required for construction of utility facilities.

(Prior Code, § 3.25.050) (Ord. 258, passed 2-1-1999)

§ 51.09 RIGHTS-OF-WAY FEES.

(A) Every person that owns, operates or controls utility facilities in the city shall pay a rights-of-way use fee in the amount determined by resolution of the city council.

(B) Every person that utilizes utility facilities in the city to provide utility service(s), whether or not the person owns the utility facilities utilized to provide the service(s), shall pay a rights-of-way access fee in the amount determined by resolution of the city council for every utility service provided in the city.

(C) A person subject to the both the rights-of-way use fee in subsection (A) and the rights-of-way access fee in subsection (B) of this section shall deduct from the total amount due the lower of the fees due under subsection (A) and subsection (B) or, in the event the fees due under subsection (A) and subsection (B) are the same, deduct from the total amount due the full amount of one of the fees.

(D) Fees required by this section shall be reduced by any franchise fees, but in no case shall be less than zero dollars (\$0).

(E) No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the city may have for further or additional sums payable.

(F) Unless otherwise agreed to in writing by the city, the fees set forth under this section shall be paid quarterly, in arrears, within 45 days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of the basis for the calculation of the amount payable. The utility operator or utility provider shall provide to the city any additional reports or information the city deems necessary to ensure compliance with this section. Any person who fails to remit any fees when due under this § 51.09 shall pay interest at the rate of one and one-half percent (1.5%) per month or fractions thereof, without proration for portions of a month, on the total amount due, from the date on which the payment first became delinquent, until received by the city.

(G) The calculation of the fees required by this section shall be subject to all applicable limitations imposed by federal or state law.

(H) The city reserves the right to enact other fees and taxes applicable to person(s) subject to this Chapter. Unless expressly permitted by the city in enacting such fee or tax, or required by applicable state or federal law, no person may deduct, offset, or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the fees required under this Chapter.

(I) Within 30 days of a written request from the city, or as otherwise agreed to in writing by the city, every utility operator and utility provider shall furnish the city, at no cost to the

city, information sufficient to demonstrate compliance with this section. If the city's review or audit of the books, records and other documents or information of the utility operator or utility provider demonstrates that the utility operator or utility provider has underpaid the rights-of-way use fee or rights-of-way access fee by three percent or more, the utility operator or utility provider shall reimburse the city for the cost of the review or audit, in addition to any interest and penalties owed under this Chapter. Any underpayment, including any interest, penalties or audit cost reimbursement, shall be paid within 30 days of the city's notice to the utility operator or utility provider of such underpayment. The utility provider or utility operator shall maintain records subject to this subsection for not less than six years.

(J) ROW usage fees not received by the city on or before the due date are subject to the following penalties:

(1) Any person who has not remitted the correct fees when due as provided in this section shall pay the following penalty, as applicable, in addition to the amount and any interest due:

(a) First occurrence during any one calendar year: 10 percent of the amount owed, or \$25.00, whichever is greater.

(b) Second occurrence during any one calendar year: 15 percent of the amount owed, or \$50.00, whichever is greater.

(c) Third occurrence during any one calendar year: 20 percent of the amount owed, or \$75.00, whichever is greater.

(d) Fourth occurrence during any one calendar year: 25 percent of the amount owed, or \$100.00, whichever is greater.

(2) If the city determines that the nonpayment of any remittance due under this section is due to fraud or intent to evade the provisions hereof, an additional penalty of 25 percent of the amount owed, or \$500.00, whichever is greater, shall be added thereto in addition to other penalties stated in this section.

#### § 51.10 GOVERNING LAW.

Any license or franchise granted under this chapter is subject to the provisions of the Constitution and laws of the United States and the state and the ordinances and Charter of the city.

(Prior Code, § 3.25.055) (Ord. 258, passed 2-1-1999)

§ 51.~~10~~11 WRITTEN AGREEMENT.

No license or franchise shall be granted hereunder unless the agreement is in writing.  
(Prior Code, § 3.25.055) (Ord. 258, passed 2-1-1999)

§ 51.~~11~~12 NON-EXCLUSIVE GRANT.

No franchise-license granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights-of-way of the city for delivery of telecommunications-utility services or any other purposes. The city expressly reserves the right to grant licenses, franchises or other rights or privileges to other persons, as well as the city's right to use the public rights-of-way, for similar or different purposes.

(Prior Code, § 3.25.055) (Ord. 258, passed 2-1-1999)

§ 51.~~12~~13 SEVERABILITY AND PREEMPTION.

(A) (1) If any section, division, sentence, clause, phrase, term, provision, condition, covenant or portion of this chapter is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of the chapter shall not be affected thereby, but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, division, sentence, clause, phrase, provision, condition, covenant and portion of this chapter shall be valid and enforceable to the fullest extent permitted by law.

(2) In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this chapter, then the provision shall be read to be preempted to the extent and or the time required by law.

(B) In the event such federal or state law, rules or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall, thereupon, return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of the city, and any amendments hereto.

(Prior Code, § 3.25.055) (Ord. 258, passed 2-1-1999)

§ 51.~~13~~14 COMPLIANCE WITH LAWS.

Any grantee under this chapter shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all codes, ordinances, resolutions, rules and regulations of the city heretofore or hereafter adopted or established during the entire term any license or franchise granted under this chapter, which are relevant and relate to the construction, maintenance and operation of a telecommunications system utility facilities.

(Prior Code, § 3.25.055) (Ord. 258, passed 2-1-1999)

#### ~~§ 51.14 CONSENT.~~

~~—Wherever the consent of either the city or of the grantee is specifically required by this chapter or in a franchise granted, such consent will not be unreasonably withheld.~~

~~(Prior Code, § 3.25.055) (Ord. 258, passed 2-1-1999)~~

#### § 51.15 APPLICATION TO EXISTING ORDINANCE AND AGREEMENTS.

To the extent that this chapter is not in conflict with and can be implemented with existing code ordinances and franchise agreements, this chapter shall apply to all existing ordinances and franchise agreements for use of the public right-of-way for telecommunications utility facilities or utility services.

(Prior Code, § 3.25.055) (Ord. 258, passed 2-1-1999)

#### ~~§ 51.16 CONFIDENTIALITY.~~

~~—The city agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the state's Public Records Law, being ORS 192.001 et seq.~~

~~(Prior Code, § 3.25.055) (Ord. 258, passed 2-1-1999)~~

#### § 51.99 PENALTY.

(A) Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be fined not less than \$100, nor more than \$1,000, for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs. The enforcement of this provision shall be consistent with the provisions of this code regulating code enforcement.

(B) Nothing in this chapter shall be construed as limiting any judicial remedies that the city may have, at law or in equity, for enforcement of this code.

(Prior Code, § 3.25.055) (Ord. 258, passed 2-1-1999)

## MEMORANDUM

TO: Rob Drake, Interim City Manager

FROM: Chris Crean, City Attorney's Office

SUBJECT: Allowable and Prohibited Political Activities for City Staff, Appointed and Elected Officials

DATE: September 6, 2024

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As you are aware, there are a number of city council positions on the ballot in November 2024. Because of the interest these races likely will generate, we wanted to ensure that the city has appropriate information regarding prohibited/allowed political activities for city staff, appointed officials and elected officials. This memo is designed to address all three groups in turn, and applies equally to ballot measures as well as city council elections.

### Political Activity

As an initial matter, ORS 260.432 restricts political campaigning by public employees, and applies to "political activity," which means supporting or opposing measures, candidates, recalls, political committees or petitions.<sup>1</sup> Supporting or opposing a candidate for city council becomes political activity when the candidate files the candidate form and pays the required fee. For a ballot measure, supporting or opposing a measure becomes political activity when the measure is certified to the ballot. For measures that are referred by city council, our office recommends that city staff cease all political advocacy regarding the measure when city council passes the resolution referring the measure to the voters.

In addition, it is important to keep in mind that Oregon law makes significant distinctions between activities of public employees, appointed officials and elected officials, which you will see reflected in this memo.

### Public Employees

<sup>1</sup> ORS 260.432 is in effect as follows:

- For initiative, referendum and recall petition efforts, as soon as a prospective petition is filed with the appropriate elections filing officer;
- For ballot measures referred to the ballot by a governing body (district, city, county, state) as soon as the measure is certified to the ballot;
- For candidate issues, as soon as the person becomes a candidate under the definition in ORS 260.005(1)(a); and
- For actions related to a political committee, whenever the political committee is active.

A “public employee” is defined as an unelected public official (whether paid or unpaid), including appointed board and commission members (i.e. the Planning Commission). ORS 260.432 prohibits “public employees” from promoting or opposing election petitions, candidates or measures while on the job during work hours. Towards this end, city resources may not be used to for political activity, including such resources as city computers or city-owned cell phones. Further, any prepared measure fact sheets must be equitable, fair, unbiased and dispassionate.

The following provides a list of allowed and prohibited activities by public employees:

**Public employees while on the job during work hours MAY:**

- ✓ Prepare and distribute impartial written material or make an impartial presentation that discusses election subjects;
- ✓ Perform standard job duties such as taking minutes at a public meeting, maintaining public records, opening mail, inserting a proposed resolution into a board agenda packet;
- ✓ Impartially advise employees about possible effects of a ballot measure, but may not threaten employees with financial loss to vote a particular way;
- ✓ Address election-related issues while on the job in a factual and impartial manner if such activity is legitimately within the scope of an employee’s normal duties;
- ✓ Prepare neutral, factual information for a governing body to use in determining what position to take on an issue (planning stage of a governing body’s proposed issue before certified to the ballot is not subject to ORS 260.432);
- ✓ In a clerical manner, incorporate amendments into a finalized version of a governing body’s resolution on an issue, respond to public records request for information, even if the material advocates a political position;
- ✓ Wear political buttons at any time subject to applicable employer policies (but see below for further restrictions for certain employees performing voter registration duties). However, other activities such as displaying campaign signs or distributing campaign materials are not allowed during public employee work time; and
- ✓ Express personal political views with the exception of employees performing voter registration duties under the National Voter Registration Act (NVRA)—this typically applies to library employees.

Public employees may use personal time, lunch hours, breaks and days off—essentially time when they are considered to be off-duty—to participate in voluntary political activity. We recommend that city employees keep a record when engaging in political activity to verify that the political activity actually occurs while off-duty.

**Public employees during work hours MAY NOT:**

- ✗ Prepare or distribute written material, post website information, transmit emails, or make a presentation that advocates a political position;
- ✗ Collect funds or prepare filing forms or correspondence on behalf of candidates or political committees;

- ✘ Produce or distribute a news release or letter announcing an elected official's candidacy for re-election (except for an elected official doing so as an official duty) or presenting an elected official's political position;
- ✘ Make outgoing calls to schedule or organize campaign events or other political activity on behalf of an elected official or political committee (however, a scheduler may, as part of their official duties, take incoming calls about the official's availability and add an event to the schedule);
- ✘ Grant unequal access to public facilities to candidates or political committees;
- ✘ Direct other public employees to participate in political activities when in the role of a supervisor;
- ✘ Draft, type, format, or edit a governing body's resolution that advocates a political position (except to conform the resolution to a standard format);
- ✘ Prepare or give recommendations to the governing body urging which way to vote on such a resolution;
- ✘ Sign such a resolution except if the signature is only ministerial and clearly included to attest the board took the vote;
- ✘ Announce the governing body's position on such a resolution to the media;
- ✘ Include the governing body's position or vote on such a resolution in a jurisdiction's newsletter or other publication; or
- ✘ Influence the political choices of another person if the employee provides voter registration assistance services under the NVRA. For example, any person providing NVRA-required voter registration services on behalf of the city may not wear political buttons. In effect, these employees may not make any statement or take any action towards a person registering to vote that would lead the person to believe the voter registration has any bearing on the availability of services or benefits

### **Appointed Officials**

For the purposes of ORS 260.432, "appointed officials," such as planning commissioners or library board members, are considered "public employees" when acting in their official capacity. As a result, for ballot measures, once the ballot measure is certified to the ballot, appointed officials may not campaign while acting in their official capacity. Nor may they support or oppose candidates in their official capacity, including themselves when running for office. Appointed officials are acting in their official capacity when they are at a meeting of the board or commission, working on a duty assigned by the board or commission, working on an official publication for the board or commission, or when appearing at an event in their official capacity.

Just like public employees, appointed officials may use personal time—essentially time when they are not acting in their role with the city—to participate in voluntary political activity. Again, we advise that appointed officials keep records when appropriate to verify any such political activity actually occurs while off-duty.

Appointed officials may use their titles to engage in political advocacy (including endorsing candidates and ballot measures) as long as they are not acting in an official capacity when

authorizing use of their title. For example, an appointed official may write a letter to the editor that contains political advocacy so long as they do so on their own time and not in their official capacity.

When using their titles, however, *appointed officials need to make clear that they are not acting in an official capacity* and that their title is being used for identification purposes only. To accomplish this, appointed officials should include some type of written or oral statement, depending on the form of communication being used, to this effect. For example, a statement in a letter to the editor that the appointed official is writing in his or her individual capacity and is not speaking on behalf of his or her board or commission or the city would accomplish this goal.

### **Elected Officials<sup>2</sup>**

As noted, elected officials are not considered public employees for purposes of ORS 260.432 and thus have much broader latitude with respect to political activity. What follows is a list of allowable and prohibited activities by elected officials:

#### Elected Officials MAY:

- ✓ Advocate a political position at any time, including endorsement of candidates for public office;
- ✓ Perform campaign activity at any time, but must exercise caution not to involve any public employees' work time to do so;
- ✓ Vote as part of City Council to support or oppose a measure, but must not use public employee staff time to assist with such activities, including drafting of the resolution, except for ministerial functions (such as the City Recorder's preparation of minutes reflecting the vote); and
- ✓ Use their own designated public office space and equipment in advocacy activities, but only consistent with the city's otherwise applicable policies concerning use of public property and equipment. Such use does not trigger an election law violation, but could result in a violation of other applicable laws or regulations including state ethics laws.

#### Elected Officials MAY NOT:

- ✗ Direct or request that a public employee, either on or off duty, perform any political activity, such as preparing advocacy materials including speeches, letters, resolutions and advertising pieces; preparing materials for voters' pamphlets; and filing contribution and expenditure transactions or reports; or
- ✗ Have an opinion piece or letter advocating a political position published in a public entity's newsletter or other publication produced or distributed by public employees.

This is not an exhaustive list and there are often issues that can only be addressed on a case-by-case basis. It is important to understand and follow these guidelines—obviously, to ensure

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<sup>2</sup> Includes a person appointed to fill a vacancy in an elective public office.

September 6, 2024

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compliance with the law but also to ensure civil penalties are not imposed. Any penalty assessed must be paid by the violating elected official or public employee.

Please do not hesitate to contact our office if you have any questions about this material or if you have additional concerns or questions about prohibited and allowed political activities.

CDC

# October 2024

| <u>MEETING</u>  | <u>PRIMARY</u> | <u>ALTERNATE</u> | <u>NOTE</u>                                   | <u>DATE</u> |
|---|----------------|------------------|---|-------------|
| Economic Development Commission                             | Martinez       |                  | 1st Wednesday at 6:00 pm                      | 10/2        |
| City Council  |                |                  | <b>1st Monday of the month at<br/>7:00 pm</b> | 10/7        |
| Planning Commission   | Lenahan        |                  | 2nd Wednesday at 7:00 pm                      | 10/9        |
| Washington County Office of<br>Community Development Policy | Papen          | <i>Kindel</i>    | 2nd Thursday 7:00pm                           | 10/10       |
| Parks & Rec Board   | Papen          |                  | 2nd Monday at 6:00 pm                         | 10/14       |
| Washington County Coordinating<br>Committee (WCCC)          | Lenahan        | <i>Open</i>      | 2nd Monday at 12:00 noon                      | 10/14       |
| Library Board   | Smith          |                  | 3rd Wednesday at 7:00pm                       | 10/16       |
| City Council  |                |                  | <b>3rd Monday of the month at<br/>7:00 pm</b> | 10/21       |
| Metro Policy Advisory Committee<br>(MPAC)                   | Reid           |                  | 4th Wednesday at 5:00pm                       | 10/23       |
| Col-Pac EDD   |                |                  |   |             |
| Metropolitan Area Communcations<br>Commission (MACC)        | Sheldon        | <i>Smith</i>     |   |             |
|   |                |                  |   |             |

# 2024 City Council Meeting Calendar Schedule

## 2024 City Council Meeting Dates-7:00 p.m.

|  |        |  |         |
|--|--------|--|---------|
| 1/2 **   | 4/1 ** | 7/1**  | 10/7 ** |
| 1/16   | 4/15   | 7/15   | 10/21   |
| 2/5 **   | 5/6 ** | 8/5 **   | 11/4 ** |
| 2/20   | 5/20   | 8/19-canceled  | 11/18   |
| 3/4 **   | 6/3 ** | 9/3 **   | 12/2 ** |
| 3/18   | 6/17   | 9/19   | 12/16   |
| Meetings in yellow are Tuesday meetings due to Monday holidays |        | Meetings with ** behind them have a 6:00 pm Work Session |         |

## 2024 Schedule for Board and Commission Meetings

| 1st Wednesday<br>6:00 pm | Economic<br>Development | 2nd Monday<br>6:00 pm | Parks & Recreation<br>Board | 2nd<br>Wednesday<br>7:00 pm | Planning<br>Commission | 3rd Wednesday<br>7:00 pm | Library Board |
|--------------------------|-------------------------|-----------------------|-----------------------------|-----------------------------|------------------------|--------------------------|---------------|
| 1/3                      | PAPEN                   | 1/8                   | FAGE                        | 1/10                        | MARTINEZ               | 1/17                     | LENAHAN       |
| 2/7                      | SHELDON                 | 2/12                  | SHELDON                     | 2/14                        | SHELDON                | 2/21                     | SHELDON       |
| 3/6                      | LENAHAN                 | 3/11                  | PAPEN                       | 3/13                        | SMITH                  | 3/20                     | MARTINEZ      |
| 4/3                      | SMITH                   | 4/8                   | LENAHAN                     | 4/10                        | LENAHAN                | 4/17                     | FAGE          |
| 5/1                      | SHELDON                 | 5/13                  | FAGE                        | 5/8                         | LENAHAN                | 5/15                     | KINDEL        |
| 6/5                      | KINDEL                  | 6/10                  | KINDEL                      | 6/12                        | FAGE                   | 6/20                     | SMITH         |
| 7/3                      | PAPEN                   | 7/8                   | SMITH                       | 7/10                        | KINDEL                 | 7/17                     | MARTINEZ      |
| 8/7                      | MARTINEZ                | 8/12                  | MARTINEZ                    | 8/14                        | PAPEN                  | 8/21                     | SHELDON       |
| 9/4                      | FAGE                    | 9/9                   | SHELDON                     | 9/11                        | KINDEL                 | 9/18                     | LENAHAN       |
| 10/2                     | MARTINEZ                | 10/14                 | PAPEN                       | 10/9                        | LENAHAN                | 10/16                    | SMITH         |
| 11/6                     | SHELDON                 | 11/12                 | SMITH                       | 11/13                       | MARTINEZ               | 11/20                    | PAPEN         |
| 12/4                     | LENAHAN                 | 12/9                  | KINDEL                      | 12/11                       | FAGE                   |                          |               |

